84296-5

NO. 62167-0-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

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Phoenix Development, Inc.,

Appellant,

v.

City of Woodinville,

Respondent.

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# CITY OF WOODINVILLE'S PETITION FOR REVIEW

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## A. IDENTITY OF PETITIONER

The City of Woodinville, Washington municipal corporation ("the City"), hereby respectfully seeks review by the Supreme Court of the published Court of Appeals decision identified in Part B.

## B. COURT OF APPEALS DECISION

The Court of Appeals filed its opinion on November 2, 2009. The Court of Appeals denied the City's motion for reconsideration on January 21, 2010, and subsequently issued an order authorizing publication of the decision on February 22, 2010. The Court of Appeals' slip opinion is in the Appendix at pages A-1 to A-28. The orders on reconsideration and publication are in the Appendix at A-27 through A-30.

## C. ISSUES PRESENTED FOR REVIEW

1. Where statutes charge local legislative bodies with exclusive authority to make a site-specific rezone decision, a discretionary legislative act, may courts usurp the decision-making authority of the local legislative body and compel the rezone of property based upon a court's evaluation of the merits of the proposed rezone?

2. Where this Court has held that Growth Management Act ("GMA") policy considerations do not come into play with respect to a local legislative body's denial of a site-specific rezone, was the Court of

Appeals' decision on the rezones here improperly tainted by GMA policy considerations?

## D. STATEMENT OF THE CASE

1. Background/Introduction. The relevant factual and procedural history of this case is set forth in the Court of Appeals decision. The instant matter arises out of an attempt by Phoenix Development, Inc. ("Phoenix") to rezone and subdivide two undeveloped parcels located in Woodinville. The property at issue—known as the Wood Trails and Montevallo sites—has been classified as R-1 (one dwelling unit per acre) under the City's zoning code since Woodinville's incorporation in 1993. A-35, A-41.[1] In 2007, following lengthy hearings and public testimony, the Woodinville City Council ("City Council") voted unanimously to deny Phoenix's request to rezone the parcels to R-4 (four dwelling units per acre) density levels. A-40, A-46.

The City Council's written decisions regarding each project included several pages of detailed findings and conclusions. A-35 to A-46. The City Council specifically found, *inter alia*, that: (i) the current R-1 zoning was appropriate for the Wood Trails/Montevallo project sites and was consistent with the City's comprehensive plan; (ii) the City would

[1] The proposed Wood Trails subdivision is comprised of 38.7 acres and would include 66 residential lots. The proposed Montevallo subdivision is comprised of 16.48 acres and would include 56 residential lots. Op. at 3.

meet applicable population growth targets without the proposed rezones; (iii) there had been no substantial change in circumstances since the current R-1 zoning designation of the subject properties was originally enacted; (iv) the envionmental impact statement for the projects identified unavoidable adverse impacts to the City's transportation networks; (v) the City had made the deliberate policy decision to focus its near-term planning and growth efforts—including capital infrastructure funding—within the downtown area rather than within the City's low-density residential neighborhoods; and (vi) the City's "sustainable development study", aimed at determining appropriate future land use strategies, was not yet complete. *Id.* The City Council cited numerous comprehensive plan policies in support of its decisions. A-38, A-39, A-44 to A-45.

2. The Superior Court's dismissal of Phoenix's LUPA appeal.

Phoenix appealed the City Council's decision by filing a petition in King County Superior Court under 36.70C RCW, the Land Use Petition Act ("LUPA"). Noting that "the standard of review under LUPA is deferential to both the legal and factual determinations of local jurisdictions with expertise in land use regulation," the trial court concluded that Phoenix had failed to satisify any of the criteria for granting judicial relief. It dismissed Phoenix's petition. A-31, A-32.

3. Reversal by the Court of Appeals.

The Court of Appeals subsequently reversed the City Council's decision, effectively ordering the City to rezone the subject property. The court's rationale for the reversal focused primarily upon GMA policy considerations and prior decisions of the Growth Mangement Hearings Board ("GMHB"). Op. at 15-16, 20-23, 25-26.[2] Quoting the GMHB, the court concluded that the City had violated the GMA's residential density objectives by denying Phoenix's rezone proposals:

> Woodinville may not engender or perpetuate a near-term land use pattern (one-acre lots) that will effectively thwart long-term (beyond the twenty-year planning horizon) urban development within its boundaries.

Op. at 15 (citing *Hensley v. City of Woodinville*, No. 96-3-0031, 1997 WL 816261 (Cent. Puget Sound Growth Mgmt. Hr'gs Bd. October 10, 1997). The Court of Appeals subsequently denied the City's motion for reconsideration, but later granted a motion to publish its opinion.

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[2] Since the GMHB decision in question, the City has made significant efforts to increase urban density in its downtown core as part of its comprehensive plan. A-37, A-38, A-43, A-44. This is a legislative decision. The Court of Appeals improperly imported the policy issues involved in the GMHB decision into the site-specific rezone decision at issue here. The court used apples to analyze oranges.

## E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

This Court is familiar with the criteria governing the acceptance of review of a Court of Appeals opinion. Here, the Court of Appeals decision satisfies three of these standards: RAP 13.4(b)(1), (2) & (4).

### 1. The Court of Appeals decision involves an issue of substantial public interest.

This petition for review seeks the Supreme Court's post-LUPA reaffirmation regarding one of the most fundamental aspects of municipal power: the authority and discretion of local legislative bodies to make zoning decisions appropriate for their own communities. Such decisions are discretionary legislative acts. The courts cannot compel elected legislative bodies to make particular zoning decisions. *Teed v. King County*, 36 Wn. App. 635, 643, 677 P.2d 179 (1984). The Court of Appeals substituted its own judgment regarding the merits of the proposed rezones for that of the City Council, and compelled the City to rezone property for a landowner's benefit. Notably, the court did not find the City's zoning code to be unconstitutional or otherwise inconsistent with state law. It simply disagreed with the City Council's discretionary decision to deny the rezones and instead substituted its own judgment for that of the elected members of the City Council.

Although the case itself involves only two parcels of land, the implications of this published decision, if not reversed, will extend far beyond the facts of this litigation and will establish confusing, contradictory precedent both for city and county legislative bodies and for landowners throughout the state. It will also fundamentally alter the traditional landscape of Washington zoning law by empowering private developers and courts to define local land use needs and requirements and to dictate local zoning map amendments. As this decision so clearly implicates a critical public concern—land use decisionmaking—its public significance is profound. Review by this Court is necessary under RAP 13.4(b)(4).

a. Fundamental public policy in Washington State statutes require that local legislative bodies exercise discretion in evaluating site-specific rezones.

At its core, the Court of Appeals reengineered a discretionary decision by a local legislative body—denial of a rezone application—into a ministerial decision. The court improperly emphasized the hearing examiner's recommendation over the well-reasoned decision of the City Council, as if the hearing examiner—rather than the Council—was the final decision-maker on the rezone. The court concluded that because the

proposed rezones complied with the City's zoning code and general rezone criteria, the City was required to grant approval. *See* Op. at 3, 14.

The power to rezone property occupies a unique status under Washington law. Rezoning is fundamentally a legislative act. *Lutz v. City of Longview*, 83 Wn.2d 566, 570, 520 P.2d 1374 (1974); *Teed*, 36 Wn. App. at 644.[3] Unlike virtually every other site-specific land use approval category, the final decision regarding a proposed rezoning action must be made by the local legislative body itself, may not be delegated to a planning commission, board or adjustment, hearing examiner or other subordinate decision-maker, and may not be exercised by local citizens through the initiative or referendum process. *See* RCW 35A.63.170(2)(c); *Southwick, Inc. v. City of Lacey*, 58 Wn. App. 886, 889, 795 P.2d 712 (1990); *Leonard v. City of Bothell*, 87 Wn.2d 847, 853, 557 P.2d 1306 (1976). A rezone is likewise the only site-specific land use approval that must be effectuated by ordinance. *See, e.g.* RCW 35A.63.100(2); 17 William B. Stoebuck & John W. Weaver, WASHINGTON PRACTICE: REAL ESTATE: PROPERTY LAW §4.16 (2d ed. 2004). Finally, rezones are one of the few categories of land use proposals for which applicants

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[3] LUPA itself recognizes that an area-wide rezone is fundamentally a legislative action. RCW 36.70C.020(1). There is no conflict in the recognition that a site-specific rezone is both adjudicatory in nature requiring a quasi-judicial hearing procedure and legislative in nature requiring a legislative action to effect the rezone. *See, e.g., Teed*, 36 Wn. App. at 643-44.

are not protected under Washington's "vested rights" doctrine. *Teed*, 36 Wn. App. at 645.

These unique characteristics underscore the significance of rezoning in relation to other, less consequential development approvals. While other permits may authorize an applicant to occupy, subdivide or *use* real property in a particular manner, only a rezone involves the formal amendment of the official zoning map to permanently *reclassify* a parcel. RCW 35A.63.100(2); 17 Stoebuck & Weaver, WASHINGTON PRACTICE §4.16. For this reason, as this Court has observed, "the state has vested the authority to zone and rezone *solely* in the city council." *Lutz*, 83 Wn.2d at 570 (emphasis added).[4]

The corollary to this principle is that a local legislative body's rezoning determination—particularly its decision *not* to rezone a particular parcel—is inherently discretionary. *See, e.g., Duckworth v. City of Bonney Lake,* 91 Wn.2d 19, 27, 586 P.2d 860 (1978) (wisdom, necessity, and policy of zoning law are matters left "exclusively to the legislative body"); *State ex rel. Myhre v. City of Spokane,* 70 Wn.2d 207, 210, 422 P.2d 790 (1967) ("Zoning is a discretionary exercise of police power by a legislative authority. . . . If the validity of a legislative authority's

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[4] Amendments to local comprehensive plans, for example, are similarly legislative acts. *See, e.g., Coffey v. City of Walla Walla*, 145 Wn. App. 435, 187 P.3d 272 (2008) (discussing legislative actions).

classification for zoning purposes is fairly debatable, it will be sustained"). In short, "[t]he city council cannot be compelled to pass a rezoning ordinance, however fair, reasonable, and desirable it may be[.]" *Besselman v. City of Moses Lake*, 46 Wn.2d 279, 280, 280 P.2d 689 (1955).

This judicial deference acknowledges that city councils (or county legislative bodies), comprised of elected officials, are ultimately accountable to local voters for their zoning decisions. Unlike other land use permits which are decided by reference to fixed approval criteria, zoning amendments necessary involve *policy* considerations—e.g., implementation of the city's comprehensive plan, shifts in local public opinion, and changes in nearby land use patterns. *See Henderson v. Kittitas County*, 124 Wn. App. 747, 754, 100 P.3d 842 (2004), *review denied*, 154 Wn.2d 1028 (2005).

The judiciary's refusal to compel zoning amendments is rooted in separation of powers concerns:

> *Courts simply do not possess the power to amend zoning ordinances or to rezone a zoned area*, and they cannot and should not invade the legislative arena or intrude upon municipal zoning determinations, absent a clear showing of arbitrary, unreasonable, irrational or unlawful zoning action or inaction.

*Teed,* 36 Wn. App. at 644-45 (citation omitted) (emphasis added). Washington courts do not—and cannot—rezone property.

b. The Court of Appeals' decision fundamentally conflicts with public policy and alters Washington zoning law.

The Court of Appeals decision turns this decades-old principle on its head and effectively transforms the local rezoning process into a ministerial act—i.e., one in which "the applicant. . . is entitled to its immediate issuance upon satisfaction of relevant ordinance criteria. . . . " *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947, 960, 954 P.2d 250 (1998).[5] The crux of the court's holding is that the City was *required* to grant the Wood Trails/Montevallo rezone requests if they satisfied the City's zone reclassification standards and were generally compliant with the City's comprehensive plan. Op. at 16, 26. This position confuses the critical distinction between a local government's zoning classification for a particular property and its subsequent administration of that zone:

> The discretion permissible in zoning matters is that which is exercised in *adopting* the zone classifications with the terms, standards and requirements pertinent thereto. . . . The acts of administering a zoning ordinance do not go back to the questions of policy and discretion which

[5] It is noteworthy that *Mission Springs* involved a truly ministerial act by a local government—the issuance of a grading permit. *Mission Springs,* 134 Wn.2d at 954.

> were settled at the time of the adoption of the ordinance.

*Mission Springs*, 134 Wn.2d at 961 (citing *State ex rel. Ogden v. City of Bellevue*, 45 Wn.2d 492, 275 P.2d 899 (1954).

The Court of Appeals decision, if not reversed, will result in courts—rather than local legislative bodies—assuming an unfamiliar and incongruous role as ultimate decision-makers in local zoning matters. Although this case was not a SEPA appeal, the Court of Appeals here looked to the Wood Trails/Montevallo environmental impact statement for information supporting the requested rezones while ignoring over 2,200 pages of detailed evidence submitted by transportation, engineering, and environmental professionals at the public hearings. Op. at 18, 24.[6]

The court should have resolved these evidentiary issues in a fashion similar to Division Three's recent decision in *Lanzce G. Douglass,*

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[6] The Court of Appeals clearly erred in concluding that the Woodinville City Council's decisions denying the Wood Trails/Montevallo rezones were not supported by substantial evidence. Op. at 17. The court reached this conclusion by improperly deferring to the factual determinations of the hearing examiner rather than the City Council. Op. at 19-20. *See, e.g., Citizens to Preserve Pioneer Park, LLC v. City of Mercer Island*, 106 Wn. App. 461, 474, 24 P.3d 1079 (2001) The hearing examiner's role in the rezone proceedings was recommendatory only; the City Council, as the deciding entity, was required to enter its own findings in support of its decision and was thus the highest fact-finder. *See* RCW 35A.63.170(2)(c); WMC 17.07.030; *Parkridge v. City of Seattle,* 89 Wn.2d 454, 464, 573 P.2d 359 (1978). All factual inferences should likewise have been viewed in favor of the City as the prevailing party in the administrative proceedings below. *Benchmark Land. Dev. Co. v. City of Battle Ground*, 146 Wn.2d 685, 694, 49 P.3d 860 (2002) (citation omitted).

*Inc. v. City of Spokane Valley*, No. 27826-3-III, 2010 WL 448049 (Wash. App. Feb. 4, 2010). There, the Court of Appeals accepted the final decision-maker's determination of the weight given to reasonable but competing inferences, did *not* substitute the court's own judgment for that of the decision-maker, and afforded proper recognition to record evidence supporting the decision. *Douglass,* at *4-*7.

By reducing the rezoning of property to an essentially ministerial act, the Court of Appeals decision flies in the face of Washington statutes and the public policy that local legislative bodies have discretion in granting proposed rezones. The court's decision will only encourage LUPA petitions challenging denials of site-specific rezone requests by local legislative bodies with the judiciary weighing the merits of each proposal. The effect of this ruling is nothing short of a sea change in Washington land use law that will severely affect cities and counties throughout the state. This Court should accordingly grant review pursuant to RAP 13.4(b)(4).

2. The Court of Appeals' decision conflicts with existing precedent.

Review is also appropriately granted under RAP 13.4(b)(1-2) because, as the above discussion of public policy demonstrates, the Court of Appeals decision conflicts with numerous decisions of this Court and

the Court of Appeals. The purpose of this section is to specifically identify the precedent which conflicts with the Court of Appeals decision here. This necessarily results in some overlap in the analysis of why review is merited.

a. The Court of Appeals decision conflicts with prior decisions holding that courts cannot compel a rezone.

By reversing the City Council's denial of the Wood Trails/ Montevallo rezone requests, the Court of Appeals essentially compelled the City to enact an ordinance rezoning the subject parcels. This holding directly conflicts with a lengthy body of Washington precedent.

In *Teed,* for example, the Court of Appeals reaffirmed the traditional principle that "[t]he approval or disapproval of a rezone or reclassification of a particular property is a discretionary legislative act *which cannot be compelled*[.]" 36 Wn. App. at 642-43 (emphasis added). As the *Teed* court recognized, "[c]ourts simply do not possess the power to amend zoning ordinances or to rezone a zoned area[.]" *Id.* at 644 (citation omitted) (emphasis added). *Teed* reflects a longstanding rule of Washington jurisprudence that courts will not—and cannot—force city and county councils to rezone property. *See, e.g., Myhre,* 70 Wn.2d at 210; *Bishop v. Houghton*, 69 Wn.2d 786, 792-93, 420 P.2d 368 (1966);

*Besselman,* 46 Wn.2d at 280.[7] By concluding that a developer's satisfaction of local zone reclassification criteria *entitles* it to a rezone, however, the Court of Appeals decision sharply departed from this lengthy body of precedent and conflicts with the numerous Supreme Court and Court of Appeals cases cited above. Op. at 14, 16.

For purposes of a rezone *denial*, it is largely immaterial that an applicant may have satisfied applicable zone reclassification criteria. In *Parkridge*, this Court established a judicial standard for reviewing local rezone decisions:

> (1) there is no presumption favoring the action of rezoning; (2) the proponents of the rezone have the burden of proof in demonstrating that conditions have substantially changed since the original zoning. . . ; and (3) the rezone must bear a substantial relationship to the public health, safety and welfare.

89 Wn.2d at 462. Courts have occasionally employed the *Parkridge* criteria to reverse local decisions *approving* a rezone proposal. *See, e.g., Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997). But no reported Washington case has ever used

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[7] This reflects the consensus view in other jurisdictions. *See, e.g.,* Patricia E. Salkin, *Anderson's American Law of Zoning* §8:23 (Fifth ed. 2009) p.8-78, 8-79 ("The courts do not possess the power to amend. . . zoning regulations. [T]he power to amend a zoning ordinance. . . cannot be exercised by the courts even where a denial of an application to rezone is discriminatory.").

them to overturn a local legislative body's *denial* of a rezone. *Cf. Balser Investments, Inc. v. Snohomish County*, 59 Wn. App. 29, 40, 795 P.2d 753 (1990)[8] (noting that applicant's satisfaction of rezone criteria "certainly did not mandate that a zoning official *must* grant a rezone") (emphasis added). To the contrary, *Teed, Bishop* and numerous other Washington cases unequivocally hold that a rezone *cannot* be judicially compelled under these circumstances.

The Court of Appeals ignored this voluminous precedent and instead cited to a single, factually distinguishable case, *J.L. Storedahl & Sons, Inc. v. Clark County*, 143 Wn. App. 920, 180 P.3d 848 (2008). Op. at footnotes 22, 24, 26). In *Storedahl*, the court reversed a board of county commissioners' decision to deny a rezone, but solely because the board failed to follow local code procedures requiring it to enter its own findings of fact unless it accepted the hearing examiner's recommendation. Unlike the City Council in this case, the board failed to enter its own findings. *Storedahl* is inapposite because it did not apply substantive rezone criteria to reverse the rezone denial at issue in that case, and thus—unlike the Court of Appeals decision here—did not invade the local legislative

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[8] Superseded by statute on other grounds, *Freeburg v. City of Seattle*, 71 Wn. App. 367, 370, 859 P.2d 610 (1993).

body's discretionary authority. *Storedahl* is thus distinguishable from the instant case on its facts.[9]

Here, where the hearing examiner recommended approval of Phoenix's proposed rezones, the City Council retained authority to adopt its own findings and to not follow the examiner's recommendation. *See, e.g., Lillions v. Gibbs,* 47 Wn.2d 629, 633, 289 P.2d 203 (1955). As Professor Stoebuck notes:

> Of course the local legislative body does not have to adopt a rezoning ordinance that is consonant with the planning agency's action; that action is only recommendatory. The legislative body may adopt a different ordinance *or may refuse to adopt any ordinance.*

17 Stoebuck and Weaver, WASHINGTON PRACTICE §4.16 (emphasis added).

By removing the legislative body's discretion from the decision to deny a site-specific rezone and performing its own evaluation of the evidence, the Court of Appeals' decision conflicts with existing Supreme Court and Court of Appeals precedent. RAP 13.4(b)(1-2).

b. <u>The Court of Appeals opinion conflicts with Woods v. Kittitas County and other recent decisions of this</u>

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[9] The decision of a hearing examiner or planning commission in this context is a recommendation to the elected City Council which in turn retains the authority to make the final decision. *See* WMC 17.07.030 and WMC 21.42.110(2); *Tugwell v. Kittitas County*, 90 Wn. App. 1, 951 P.2d 272 (1997).

Court that prohibit challenging a site-specific rezone decision for compliance with the GMA.

Review of the present matter under RAP 13.4(b)(1) is also warranted because the Court of Appeals ignored this Court's *Woods v. Kittitas County* decision by overturning a site-specific rezone determination based upon the City's alleged failure to comply with the GMA. In *Woods v. Kittitas County*, 162 Wash.2d 597, 603, 174 P.3d 25 (2007), this Court instructed that GMA principles could not be applied in the context of a site-specific decision. However, that is precisely what the Court of Appeals did here. The City's development regulations permit development projects within the R-1 Residential zones. *See* A-48 to A-52, A-54. Phoenix's challenge is ultimately a disguised objection to these provisions, and to the adequacy of the City's comprehensive plan and zoning regulations under the GMA's urban density policies.

In the course of reengineering the language of WMC 21.04.080 to mandate that the City Council approve the rezone if other code requirements for rezone approval are met, the Court of Appeals repeatedly referred to the GMHB's four-dwelling-units-per-acre "bright line rule" for urban density, *see* Op. at 15, 20, and 23, emphasizing specifically the GMHB's decision in *Hensley v. City of Woodinville*, No. 96-3-0031, 1997 WL 123989 (Cent. Puget Sound Growth Mgmt. Hr'gs Bd. Feb. 25, 1997).

Even though the so-called "bright line" rule is no longer viable, *see Viking Properties, Inc. v. Holm*, 155 Wn.2d 112, 128-30, 118 P.3d 322 (2005) and *Gold Star Resorts, Inc. v. Futurewise*, 167 Wn.2d 723, 222 P.3d 791 (2009) (holding that GMHB lacks authority under GMA to impose numerical density standards or make policy), the Court of Appeals infused this refuted GMA policy into its interpretation of the City's development regulations. Op. at 15-16, 20-26. The court reasoned that the City must have intended to comply with the GMHB's urban density standard by allowing developments with densities less than R-4 only if adequate services could not be provided. Op. at 16. The court reached this conclusion even though development activity on R-1 zoned lands in the City is *specifically permitted* by the City's zoning code. *See* Residential Land Use Table at WMC 21.08.030 (designating single detached residences as permitted use in R-1 zone); *see also* WMC 21.12.030 (base density for an R-1 zone is 1 dwelling unit per acre). A-48 to A-51.[10]

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[10] In light of the above-cited code provisions, the Court of Appeals clearly erred by construing the City's development regulations—specifically WMC 21.04.080—as a rezoning mandate rather than a nonbinding purpose statement. Op. at 14, 16. The City Council's interpretion of this text should have been entitled to significant judicial deference on appeal. *See, e.g., Pinecrest Homeowners' Ass'n v. Glen A. Cloninger & Assoc.*, 151 Wn.2d 279, 290, 87 P.3d 1176 (2004). By the plain terms of the City's code, the function of WMC 21.04.080 is simply to describe the "*purpose* of the City's Urban Residential zones". *See* WMC 21.04.020 (emphasis added) A-53. This section is located in a wholly different code chapter from the City's zone relassification criteria, *see* WMC 21.44.070; A-55, does not purport to supersede or otherwise modify those standards, and,

GMA concerns likewise influenced the Court of Appeals' interpretation of the City's zone reclassification criteria, which, *inter alia*, require an applicant to show a "demonstrated need" for the requested rezone. *See* WMC 21.44.070; A-55. The City Council determined that the proposed Wood Trails/Montevallo rezones were not "needed" at this time. A-37, A-43. In supplanting the City Council's policy judgment on this point, the Court of Appeals reasoned that the *Hensley* decision "reflected Woodinville's obligation to look beyond the 20 year horizon when evaluating housing needs and the impact of a current [site-specific] decision." Op. at 20. Thus, the Court of Appeals imported GMA standards and the GMHB's decision in *Hensley* into a site-specific rezone decision. This Court's holding in *Woods* is unequivocal: "the. . . . court does not have subject matter jurisdiction to decide whether a site-specific rezone complies with the GMA." *Woods*, 162 Wn.2d at 616. Because the *Phoenix* decision facially conflicts with this mandate, review by the Supreme Court is warranted pursuant to RAP 13.4(b)(1).

## F. CONCLUSION

The Court of Appeals departed from longstanding principles of land use law by compelling the City Council to pass a rezoning ordinance

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as explained by WMC 21.04.020; A-53, is intended only to "*guide the application of the zones and designations* to all lands in the City of Woodinville." (Emphasis added.)

the Council had denied after making its own findings and conclusions. By applying GMA considerations in a project-specific land use appeal, the Court of Appeals also disregarded this Court's plain holding in *Woods*. If allowed to stand, the published Court of Appeals' decision will create contradictory precedent and significantly alter Washington zoning law.

This Court should grant review of and reverse the Court of Appeals' decision and reinstate the decision of the trial court. Costs on appeal should be awarded to the City.

RESPECTFULLY SUBMITTED this 24th day of March, 2010.

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# G - APPENDIX

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| | ) | UNPUBLISHED OPINION |
| v. | ) | |
| | ) | |
| CITY OF WOODINVILLE, a Washington municipal corporation, and CONCERNED NEIGHBORS OF WELLINGTON, a Washington nonprofit corporation, | ) | |
| | ) | |
| Respondents. | ) | FILED: November 2, 2009 |
| | ) | |

Leach, J. — Phoenix Development, Inc., appeals decisions of the City of Woodinville denying site-specific rezone requests and subdivision applications for two properties. Because Phoenix's proposed rezones implement the Woodinville comprehensive plan and current zoning code and comply with the city code's general rezone criteria, we hold that the rezone denials were improper. We therefore reverse the city council's decision and remand for a determination on Phoenix's preliminary plat applications.

Background

This matter relates to two parcels located in the Wellington neighborhood of northwest Woodinville, a 38.7 acre parcel known as the Wood Trails proposal and a 16.48 acre parcel known as the Montevallo proposal.[1] In June 2004, Phoenix asked the city to amend the zoning map for these two parcels to rezone each from R-1, which allows one dwelling unit per acre, to R-4, which allows up to four dwelling units per acre[2] and submitted applications for subdivision

[1] Hearing Examiner's Wood Trails Decision (WTHE), May 16, 2007, at 4; Hearing Examiner's Montevallo Decision (MHE), May 16, 2007, at 4.

[2] WTHE Ex. 17; MHE Ex. 17.

approval. The preliminary plat applications proposed subdividing each parcel into 66 single-family residential lots[3] and included the transfer of 19 density credits from Wood Trails to Montevallo to achieve the desired number of lots on the smaller Montevallo parcel. Because only nine density credits could be transferred, the number of lots in the Montevallo proposal was reduced to 56.[4]

City staff prepared a draft environmental impact statement (DEIS) analyzing the alternatives and impacts of the Wood Trails and Montevallo proposals. The city published the DEIS in January 2006. The key issues addressed in the DEIS were soil stability, seismic hazards, and erosion potential; surface water, ground water/seepage and water runoff; wildlife, threatened or endangered species, habitat and migration routes; land use, plans and policies, neighborhood character, open space and environmentally sensitive areas; transportation, existing and proposed street system, motorized traffic, non-motorized traffic/pedestrian movement/school safe walk routes and safety hazards; and parks and recreation. The DEIS evaluated the proposed developments (proposed action) and three alternatives: (1) development at the current R-1 zoning with individual septic systems like the existing land uses in the Wellington neighborhood (R-1 zoning alternative), (2) development of attached housing (townhomes) on the Wood Trails property, with single-family

[3] WTHE at 4-5; MHE at 4.
[4] MHE at 4-5.

lots on the Montevallo property (attached housing alternative), and (3) no development on either site (no action alternative).

The final environmental impact statement (FEIS) published in December 2006 provided additional analysis and clarification of several elements, descriptions of minor changes to Phoenix's proposal, and responses to public comments. The FEIS identified the following key environmental issues:

> Earth: Soil stability/possible sand layer, seismic hazards and erosion potential associated with development of Wood Trails.
>
> Water Resources: Surface water, ground water/seepage and water runoff associated with development of Wood Trails and Montevallo.
>
> Plants & Animals: Wildlife, threatened or endangered species, habitat and wildlife connectivity routes associated with development of Wood Trails and Montevallo.
>
> Land Use: Land use plans and policies, neighborhood character, open space and critical areas associated with development of Wood Trails and Montevallo.
>
> Transportation: Transportation, existing and proposed street system, motorized traffic, non-motorized traffic/pedestrian movement/school safe walking routes and safety hazards associated with development of Wood Trails and Montevallo.
>
> Public Services: Parks and recreation associated with development of Wood Trails and Montevallo. Fire, police, schools, water and sewer were determined not to be significant environmental issues.

The FEIS includes tables comparing the impacts, mitigation, and significant unavoidable adverse impacts of the proposed action and each alternative action on the Wood Trails and Montevallo sites.[5] These tables show that the majority

of the significant unavoidable adverse impacts for the proposed action are also likely to occur under the R-1 zoning alternative. The FEIS concludes that "[a]ll likely impacts could be mitigated by a redesign—by adopted City regulations and/or by elements incorporated into the design of the proposal—to a level that is considered less than significant."[6]

Staff reports for Montevallo and Wood Trails also analyzed whether the proposals complied with the comprehensive plan and the Woodinville Municipal Code (WMC). The city code criteria for a rezone provide:

> A zone reclassification shall be granted only if the applicant demonstrates that the proposal is consistent with the Comprehensive Plan and applicable functional plans at the time the application for such zone reclassification is submitted, and complies with the following criteria:
>
> (1) There is a demonstrated need for additional zoning as the type proposed.
>
> (2) The zone reclassification is consistent and compatible with uses and zoning of the surrounding properties.
>
> (3) The property is practically and physically suited for the uses allowed in the proposed zone reclassification.[7]

Staff concluded that both proposals met the R-4 residential zone criteria and met two of three rezone criteria, under subsections 2 and 3. The staff report did not make a recommendation as to the first criterion, the "demonstrated need" requirement of WMC 21.44.070(1), stating that this criterion "ultimately requires an objective judgment by the Hearing Examiner and City Council based

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[5] FEIS at 1-10 through 1-43.
[6] FEIS at 1-9.
[7] WMC 21.44.070.

upon relevant City plans, policies, goals, and timeframes."[8] Staff recommended approval of the requested rezones as long as the "demonstrated need" requirement was met. Staff recommended that the rezone approvals be subject to a number of conditions, including mitigation measures to protect the environment, fire department access requirements, park and transportation impact fees, tree retention, and surface water management.

Public hearings regarding the Montevallo and Wood Trails rezone requests and preliminary plat applications were held on March 14 and 15 and April 5, 2007. The hearing examiner considered testimony and documentary evidence, including the FEIS and a lengthy analysis of the proposals submitted by the Concerned Neighbors of Wellington (CNW).[9] The hearing examiner recommended that the city council approve the rezones from R-1 to R-4. The hearing examiner also recommended approval of the subdivision of Wood Trails into 66 lots with the transfer of nine lots to Montevallo and the subdivision of Montevallo into 56 lots, subject to numerous conditions.[10] In the decision for each property, the hearing examiner clearly set forth the R-4 rezone criteria, applied those criteria to his findings, and concluded that all criteria were met.

On August 20, 2007, the city council entered findings, conclusions, and decision denying Phoenix's requests to rezone Wood Trails and Montevallo from

[8] Wood Trails Staff Report at 32; Montevallo Staff Report at 27.
[9] WTHE at 23-40; MHE at 22-35.
[10] WTHE at 16-22; MHE at 15-20.

R-1 to R-4. Based on its decision regarding the rezones, the council summarily denied the subdivisions as inconsistent with the sites' existing R-1 zoning designation.[11] The council, in its "legislative capacity," found that the existing R-1 zoning designation was appropriate for Phoenix's property.[12] In its "quasi-judicial capacity," the city council concluded that the rezones would be "inconsistent with significant Comprehensive Plan Policies," that the "demonstrated need" criterion in WMC 21.44.070 had not been met, and that the rezones did not "bear a substantial relationship to the public health, safety, morals or welfare" as required by case law.[13] The council concluded that public services in areas serving the Wood Trails and Montevallo proposals were not adequate[14] and that the city could not provide adequate services to those parcels in the near-term because the resources were already committed under the city's capital improvement plan for infrastructure in other parts of the city, such as the downtown area, which the city council had previously selected for focused growth.[15] The council found that additional public services were needed to support the proposed developments, that reallocating capital resources to the

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[11] City Council's Montevallo Decision (MCC), August 20, 2007, Conclusion 9; City Council Wood Trails Decision (WTCC), August 20, 2007, Conclusion 9.

[12] WTCC Findings 6.d, 9, 10.

[13] MCC Conclusion 1, Finding 13; WTCC Conclusion 1, Finding 14.

[14] MTCC Conclusion 2, Findings 11-25; WTCC Conclusion 2, Findings 13-26.

[15] MCC Findings 15-26, Conclusions 2-8; WTCC Findings 15-27, Conclusions 2-8.

subject area would be premature and inefficient, and that the mitigation measures that the developments would contribute, such as impact fees, would not correct the public service deficiencies.[16]

Phoenix filed a land use petition in superior court, seeking reversal of the city council's denial of its rezone and subdivision requests. The superior court dismissed the petition, holding that Phoenix failed to establish any of the six standards set out in the Land Use Petition Act, RCW 36.70C.130.

Standard of Review

The denial of a site-specific rezone is a land use decision.[17] The Land Use Petition Act (LUPA), chapter 36.70C RCW, provides the exclusive means for judicial review of a land use decision, with the exception of those decisions subject to review by bodies such as the growth management hearings boards.[18] Courts review denial of a site-specific rezone under LUPA[19] and may grant relief only if a petitioner has met its burden of establishing one of the following standards:

> (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;
>
> (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

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[16] MCC Findings 24-25; WTCC Findings 25-26.

[17] Woods v. Kittitas County, 162 Wn.2d 597, 610, 174 P.3d 25 (2007) (citing RCW 36.70B.020(4)).

[18] Woods, 162 Wn.2d at 610.

[19] Woods, 162 Wn.2d at 616.

> (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;
>
> (d) The land use decision is a clearly erroneous application of the law to the facts;
>
> (e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or
>
> (f) The land use decision violates the constitutional rights of the party seeking relief.[20]

In reviewing a land use decision, this court stands in the same position as the superior court.[21] Standards (a), (b), (e), and (f) present questions of law that we review de novo.[22] When reviewing a challenge to the sufficiency of the evidence under subsection (c), we view facts and inferences in a light most favorable to the party that prevailed in the highest forum exercising fact-finding authority, in this case the city and CNW.[23] The clearly erroneous test under (d) involves applying the law to the facts.[24]

Analysis

A. Legislative Findings

As a preliminary matter, Phoenix argues that the council's finding of fact 6 is unlawful because the council purports to be acting "in its legislative capacity" when the council was required to be acting in a quasi-judicial capacity. We

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[20] RCW 36.70C.130(1).

[21] Habitat Watch v. Skagit County, 155 Wn.2d 397, 405-06, 120 P.3d 56 (2005) (quoting Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn.2d 169, 176, 4 P.3d 123 (2000)).

[22] J.L. Storedahl & Sons, Inc. v. Clark County, 143 Wn. App. 920, 928, 180 P.3d 848 (2008).

[23] Woods, 162 Wn.2d at 617.

[24] Storedahl, 143 Wn. App. at 928.

agree.

A site-specific rezone request is a quasi-judicial decision that the council must evaluate under legislatively established criteria, including the comprehensive plan policies and other development regulations, which constrain the council's discretion.[25] A quasi-judicial action involves the application of existing law to particular facts rather than the creation of new policy.[26] Thus, when acting in its quasi-judicial capacity, the council is limited to interpreting existing policies and applying those policies to the particular facts relevant to its decision. By invoking its legislative authority midway through the quasi-judicial proceeding, the council adopted a new policy rather than applying existing policies and regulations. We therefore hold that finding of fact 6 in both the Montevallo and Wood Trails decisions is the product of an unlawful exercise of the council's legislative authority.

B. Rezone Denials

An applicant may challenge the denial of a rezone request on the basis that a local jurisdiction did not follow its own development regulations.[27] Local development regulations, including zoning regulations, directly constrain land use decisions.[28] Here, Phoenix alleges that the city council failed to follow the

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[25] Storedahl, 143 Wn. App. at 931.

[26] See Chaussee v. Snohomish County Council, 38 Wn. App. 630, 634-35, 689 P.2d 1084 (1984).

[27] Woods, 162 Wn.2d at 616.

[28] Woods, 162 Wn.2d at 613.

city's zoning code when it denied the rezone requests.

Three general rules apply to rezone applications: (1) there is no presumption of validity favoring a rezone; (2) the rezone proponent must demonstrate that circumstances have changed since the original zoning; and (3) the rezone must have a substantial relationship to the public health, safety, morals, or general welfare.[29] When a proposed rezone implements the policies of a comprehensive plan, the proponent is not required to demonstrate changed circumstances.[30]

Woodinville imposes additional criteria for approval of a site-specific rezone application in WMC 21.44.070:

> A zone reclassification shall be granted only if the applicant demonstrates that the proposal is consistent with the Comprehensive Plan and applicable functional plans at the time the application for such zone reclassification is submitted, and complies with the following criteria:
>
> (1) There is a demonstrated need for additional zoning as the type proposed.
>
> (2) The zone reclassification is consistent and compatible with uses and zoning of the surrounding properties.
>
> (3) The property is practically and physically suited for the uses allowed in the proposed zone reclassification.

The Woodinville zoning code contains purpose statements for various zones and map designations. The code requires that these purpose statements

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[29] Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997).

[30] Bjarnson v. Kitsap County, 78 Wn. App. 840, 845-46, 899 P.2d 1290 (1995) (citing Save Our Rural Environment v. Snohomish County, 99 Wn.2d 363, 370-71, 662 P.2d 816 (1983)).

are to be used to guide application of the zones and land use regulations within the zones.[31] WMC 21.04.080 describes the purpose of the city's urban residential zones:

> (1) The purpose of the Urban Residential zones (R) is to implement Comprehensive Plan goals and policies for housing quality, diversity and affordability, and to efficiently use residential land, public services and energy. These purposes are accomplished by:
>
> (a) Providing, in the low density zones (R-1 through R-4), for predominantly single-family detached dwelling units. Other development types, such as duplexes and accessory units, are allowed under special circumstances. Developments with densities less than R-4 are allowed only if adequate services cannot be provided.
>
> . . . .
>
> (2) Use of this zone is appropriate in residential areas designated by the Comprehensive Plan as follows:
>
> (a) The R-1 zone on or adjacent to lands with area-wide environmental constraints, or in well-established subdivisions of the same density, which are served at the time of development by public or private facilities and services adequate to support planned densities;
>
> (b) The R-4 through R-8 zones on urban lands that are predominantly environmentally unconstrained and are served at the time of development by adequate public sewers, water supply, roads, and other needed public facilities and services . . . .

The council concluded that the R-4 zone was not appropriate for Phoenix's properties for a number of reasons. The council concluded that these rezones were inappropriate "due to the deficient public facilities and services (other than sewer) in the area where the property is located and the currently ongoing sustainable development study."[32] The council further concluded that

[31] WMC 21.04.020

[32] MCC Conclusion 2.

there was no demonstrated need for the proposed rezones, that the rezones were inconsistent with significant comprehensive plan policies, and that the rezones did not bear a substantial relationship to public health, safety, morals, or welfare.

1. Adequate Services under WMC 21.04.080

Phoenix claims that WMC 21.04.080 requires that the city approve the rezone applications unless adequate services cannot be provided. WMC 21.04.080 requires Woodinville to approve a request to rezone property to R-4 if the request meets all the other rezone criteria.

WMC 21.04.080(a) provides, "Developments with densities less than R-4 are allowed only if adequate services cannot be provided . . . ." The city characterizes this code purpose statement as "simply an indicia of legislative intent" that does not give rise to an enforceable right or create a mandatory code requirement. The city claims that this provision does not supplement the specific rezone criteria described in WMC 21.44.070 and that there is no indication that the council should use the zoning code purpose statements when making site-specific zoning decisions. The city notes that WMC 21.44.070 does not refer to any purpose statement.

But the city fails to reconcile its position with the mandate of WMC 21.04.020: "The purpose statements for each zone and map designation set forth in the following sections shall be used to guide the application of the zones

and designations to all lands in the City of Woodinville." The city also does not explain why WMC 21.04.080 is phrased in mandatory terms if it is an expression of intent only. Finally, the city ignores the historical context against which it adopted WMC 21.04.080.

To satisfy certain requirements of the Growth Management Act (GMA), chapter 36.70A RCW, the city adopted its GMA comprehensive plan on June 24, 1996.[33] In Hensley v. City of Woodinville,[34] several policies contained in the comprehensive plan were challenged before a growth management hearings board, including policy LU-3.6: "Allow densities higher than one dwelling unit per acre only when adequate services and facilities are available to serve the proposed development." The board interpreted LU-3.6 to prohibit development in excess of one dwelling unit per acre unless sewer service is available and held that it was inconsistent with a GMA policy.[35]

The board stated, "Woodinville may not engender or perpetuate a near-term land use pattern (one-acre lots) that will effectively thwart long-term (beyond the twenty-year planning horizon) urban development within its boundaries."[36] The board remanded policy LU-3.6 to the city with instructions to either delete it or amend it consistent with the holdings and conclusions in the

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[33] City of Woodinville Ordinance No. 175.

[34] No. 96-3-0031, 1997 WL 123989 (Cent. Puget Sound Growth Mgmt. Hr'gs Bd. February 25, 1997) (Hensley I).

[35] Hensley I, at 8.

[36] Hensley I, at 7.

board's opinion.[37] The city did not appeal the board's decision and deleted policy LU-3.6 from its comprehensive plan.[38]

On July 14, 1997, the city adopted its amended zoning code, including the statement of purpose for urban zones quoted above. The city's adoption of WMC 21.04.080 shortly after the hearing board's admonition that the city may not engender or perpetuate one-acre lots to thwart long-term urban development within its boundaries demonstrates the city's decision to comply with a GMA density policy by allowing developments with densities less than R-4 only if adequate services cannot be provided.

Under WMC 21.04.080(1)(a) the city must approve Phoenix's request to rezone properties from R-1 to R-4, if adequate services can be provided, the requirements of WMC 21.44.070 are met, the provisions of WMC 21.04.080(2)(a) do not apply, and the rezones are not otherwise prohibited by law.

In several findings and conclusions, the council stressed that its fiscal constraints required it to prioritize its actions and had therefore selected the downtown area for focused growth and infrastructure. For example, the council found that

> [t]he City is not yet prepared to commit capital resources to the subject area in the near-term. Committing the City to prematurely

[37] Hensley I, at 11.

[38] Hensley v. City of Woodinville, No. 96-3-0031, 1997 WL 816261 (Cent. Puget Sound Growth Mgmt. Hr'gs Bd. October 10, 1997) (Hensley II).

> construct infrastructure and provide services to this area will become increasingly problematic, resulting in an increasing inefficiency of services thereby lessening the economic gain and placing a growing strain on the fiscal resources of the community.[39]

The council concluded that the proposals were inconsistent with the city's strategy to meet its regional growth objective.

> The City has chosen to meet the growth objective in the CBD [Central Business District] while insuring that new growth in other areas of the City does not negatively impact the City's transportation[,] land use and capital facilities goals and objectives.[40]

But the council made no factual findings that would support the denial of the rezones on the basis that adequate services cannot be provided, and a conclusion that adequate services cannot be provided is not supported by evidence that is substantial when viewed in light of the whole record before it.

The council does not identify any services that cannot be provided to Montevallo or Wood Trails. The council vaguely refers to "infrastructure," "facilities," and "services" throughout its decision. The only service specifically mentioned in the council's decision is transportation.

Phoenix argues that transportation is not a "service" under WMC 21.04.080(1)(a). We need not reach the question whether transportation is a service, however, because there is no evidence that transportation cannot be provided to the proposed developments. Rather, the council found that there

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[39] MCC Finding 24; WTCC Finding 25.
[40] MCC Conclusion 5; WTCC Conclusion 5.

were "unavoidable adverse impacts to transportation systems" identified by the FEIS which "can be avoided by denial of the rezone."[41] Because WMC 21.04.080(1)(a) requires a zoning density of R-4 or greater unless "adequate services cannot be provided," a finding of "unavoidable adverse impacts" is insufficient to justify the council's decision. Furthermore, the finding is not supported by the record. The FEIS states that "none of the alternatives would generate sufficient additional traffic or changes in traffic patterns to cause significant impacts to the existing level of service . . . ."[42] The FEIS also states that the R-1 development alternative—the development the city now suggests Phoenix can build—would actually generate more daily traffic on some streets than the proposed action, due to the differences in access plans between the alternatives.[43]

In recommending that the rezones be approved, the hearing examiner recognized that under WMC 21.04.080, "[d]evelopments with densities less than R-4 are allowed only if adequate services cannot be provided."[44] The hearing examiner concluded that "the Woodinville code in place when this application vested, stated that this property could not be developed as R-1 because utilities are available."[45] Although it now argues otherwise, the council also recognized

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[41] MCC Conclusion 9; WTCC Conclusion 11.
[42] FEIS at 3.5-94.
[43] FEIS 3.5-73.
[44] MHE at 9.
[45] MHE at 10; WTHE at 11.

in its findings that it was required to determine whether adequate services could be provided.[46] Viewing the record as a whole, substantial evidence does not support the conclusion that adequate services cannot be provided to Wood Trails and Montevallo.

2. Demonstrated Need

Phoenix argues that the council erred when it concluded that the demonstrated need requirement under WMC 21.44.070 was not met. Phoenix urges the court to adopt the hearing examiner's view, arguing that the examiner "presented a thorough analysis and resolution of this issue."

The hearing examiner concluded that there is a demonstrated need for additional zoning of the type proposed by Phoenix. The hearing examiner's recommendation considered all evidence presented. Although the staff report did not contain a recommendation as to demonstrated need, the hearing examiner considered the opinion expressed in the staff report that the city can meet its required housing allocation under the GMA for the planning period of 2001 to 2022 without further zone changes to higher density. The hearing examiner also considered evidence presented by CNW that a large number of homes similar to those proposed by Phoenix are available for sale within 10 miles of the proposed developments, although those homes are not necessarily in Woodinville.[47] Finally, the hearing examiner considered evidence presented

[46] MCC Finding 6; WTCC Finding 6.

by Phoenix that the city used a flawed analysis in reaching the conclusion that additional R-4 zoning was not needed. He also considered evidence that land zoned R-1 constitutes approximately 30 percent of the total area of the city and approximately 50 percent of the residentially zoned land, while available land zoned R-4 constitutes less than 2.7 percent of the city.[48] The hearing examiner concluded,

> Clearly more R-4 Zoning is needed to create a diversity of building sites availability [sic] by establishing more areas where detached single-family can be constructed at lower densities [sic] than R-1 densities. In addition, the Growth Management Hearings Board has held that Woodinville is not to perpetuate one-acre lots that will effectively thwart urban development.[49]

The hearing examiner's conclusion that the city's relative lack of R-4 zoning compared with its abundance of R-1 zoning demonstrates a need for additional single-family zoning at densities that help to further the goals of Woodinville's comprehensive plan and the GMA is supported by the record. As the board held in Hensley I, one-acre lots thwart, rather than encourage, urban development. The board's decision also reflected Woodinville's obligation to look beyond the 20-year horizon when evaluating both housing needs and the impact of a current decision. CNW's evidence that many similar lots are for sale within 10 miles of the proposed developments indicates that other cities are providing this type of housing, but does little to help us determine whether there is a need for higher

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[47] MHE Finding 13; WTHE Finding 13.
[48] MHE Finding 14; WTHE Finding 14.
[49] MHE Conclusion 2.A at 10; WTHE Conclusion 2.A at 10.

density single-family housing in Woodinville. We hold that the city's finding that the proposed rezones are not needed is not supported by evidence that is substantial when viewed in light of the whole record before the court.

3. Consistency with Comprehensive Plan

Land use decisions must generally conform to the jurisdiction's comprehensive plan.[50] In addition, WMC 21.04.070 requires that a rezone be consistent with the city's comprehensive plan and applicable functional plans.

The staff report identifies several policies implicated by the proposed rezones within the land use, housing, community design, capital and public facilities, and environmental elements of the plan. The staff report discusses these policies in detail and concludes that "the development as proposed would be consistent generally with the Comprehensive Plan. The site could accommodate development consistent with the R-4 zone."[51] The hearing examiner found that the proposals were "reasonably compliant with the Woodinville Comprehensive Plan," and adopted and incorporated the relevant portions of the staff report into his decision. The hearing examiner specifically found that

> the zone change will allow the development of low-density detached single-family homes in an area designated in the comprehensive plan as low density residential. While arguments have been made that the adjacent neighborhood is much less dense, R-4 is still classified as low density. In addition, buffering

[50] Woods, 162 Wn.2d at 613.
[51] Montevallo Staff Report at 16; Wood Trails Staff Report at 20.

> as recommended by the City, can alleviate impacts from a slight difference in density. The site will be served with City water and sewer and the street network will be improved. The west side of the site will be left in a Native Growth Protection Area . . . . It presents a range of densities, which encourages a variety of housing types to serve a variety of income levels. It preserves much of the natural features of the site, such as the wetland and will preserve trees in accordance with the City's Tree Retention regulations.[52]

The council, on the other hand, concluded that the rezones were not consistent with the comprehensive plan. However, the council did not identify any plan goals or policies that were inconsistent with the proposals. The council's findings do not support its conclusion that the proposals are inconsistent with the comprehensive plan.

Phoenix also argues that the city is collaterally estopped from arguing that R-1 zoning is allowed under the comprehensive plan because the board held in Hensley I that the city could not perpetuate low-density one-acre zoning. Collateral estoppel bars relitigation of identical issues where there has been a final judgment on the merits, the party against whom the plea is asserted was a party to or in privity with a party to the prior adjudication, and application of the doctrine does not work an injustice on the party against whom the doctrine is to be applied.[53] The issue in Hensley I was whether Woodinville's comprehensive plan violated the GMA. That is not identical to the issue here, which is judicial review of the city's denial of two site-specific rezones. Thus, collateral estoppel

[52] MHE at 8, WTHE at 9.

[53] City of Arlington v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd., 138 Wn. App. 1, 24-25, 154 P.3d 936 (2007).

does not apply.

However, Hensley I is instructive in interpreting the comprehensive plan. As we discussed above, the board held that "Woodinville may not engender or perpetuate a near-term land use pattern (one-acre lots) that will effectively thwart long-term (beyond the twenty-year planning horizon) urban development within its boundaries."[54] In Hensley I, the board held that former LU-3.6, which provided that Woodinville would "[a]llow densities higher than one dwelling unit per acre only when adequate services and facilities are available to serve the proposed development," was inconsistent with goal U-3 of the comprehensive plan, which required connection to the wastewater system when development or subdivision of land occurs at a density greater than one unit per acre, and the GMA goal that cities make urban services available within urban growth areas.[55] To resolve the inconsistency and bring the comprehensive plan into compliance with the GMA, Woodinville deleted LU-3.6 from the comprehensive plan.[56] The council found that "[t]he R-1 zoning is consistent with the 'Low Density Residential' land use designation described in the City's Comprehensive Plan . . . ."[57] However, as the hearing examiner pointed out, R-4 is also considered low density zoning under WMC 21.04.080(1)(a).

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[54] Hensley I, at 7.
[55] Hensley I, at 8.
[56] Hensley II, at 2.
[57] MCC at 2; WTCC at 2.

The FEIS analyzes the impact of the proposed action and the alternatives under approximately 25 policies enumerated in the city's comprehensive plan, including land use, housing, community design, capital and public facilities, and environmental policies.[58] The FEIS identifies no inconsistencies between the proposed rezones and the land use policies in the comprehensive plan. The proposed action was described as more consistent than the R-1 zoning alternative in regard to both housing policies discussed in the FEIS. No inconsistencies were found with the community design policies or the capital and public facilities policy. All of the alternatives had similar impacts on the environmental policies, but no major inconsistencies were identified. For example, all alternatives would cause permanent loss of the wetland on the Wood Trails site. The proposed action and attached housing alternative would cause some wetland impacts on the Montevallo site that would be avoided by the R-1 zoning alternative but would be more protective of water quality in downstream areas than the R-1 zoning alternative. Similarly, the proposed action and attached housing alternative "might be a net improvement in quality in waters downstream from the subject sites" while the R-1 zoning alternative was described as "less protective of stream functions and values."[59] The staff report also contains a discussion of these specific comprehensive plan policies and

[58] EIS 3.4-22 through 3.4-28.
[59] FEIS 3.4-27.

concludes that the proposals comply with the policies of the comprehensive plan.[60]

The council erred when it concluded the proposed rezones were inconsistent with the comprehensive plan.

4. Substantial Relationship to the Public Health, Morals, or Welfare

The council concluded that the proposals did not bear a substantial relationship to the public health, safety, morals, or welfare. However, neither the council's findings nor the record supports this conclusion.

In Henderson v. Kittitas County,[61] Division Three held that a rezone that furthered the goals of a comprehensive plan was a benefit to the public health, safety, morals and welfare. The court stated that "[t]he primary benefit of the rezone . . . is that it furthers the goals of the comprehensive plan to increase diverse uses of rural county lands and to decrease 'rural sprawl.'" [62] Here, the hearing examiner relied on Henderson to conclude that the proposed rezones promoted the public health, safety, morals, and welfare because they were consistent with the comprehensive plan.

The proposals further the city's land use policy LU-1.1 by helping the city accommodate its GMA residential growth forecasts. As stated in the FEIS, the proposed action does more to further this goal than any of the alternatives

[60] Montevallo Staff Report at 10; Wood Trails Staff Report at 13.
[61] 124 Wn. App. 747, 756, 100 P.3d 842 (2004).
[62] Henderson, 124 Wn. App. at 756.

evaluated by the city in the FEIS.[63] The proposed action also furthers LU-1.3, the city's goal of phasing growth and municipal services together, by extending sanitary sewer, building on-site storm drainage facilities, and making street frontage improvements.[64] The proposed action furthers LU-3.7 and housing policy H-1.1 by increasing the variety of housing types and lot sizes in the area, which is currently developed as large one-acre residential lots.[65]

The proposed rezones further a number of comprehensive plan policies and therefore bear a substantial relationship to the public health, safety, morals, and welfare.

In sum, WMC 21.04.080 requires that the city approve an otherwise qualified rezone application unless adequate services cannot be provided. The record establishes that adequate services can be provided to the proposed developments. Contrary to the city's contentions, there is a demonstrated need for additional R-4 zoning and the proposals are consistent with the comprehensive plan and bear a substantial relationship to the public health, safety, morals, and welfare. The rezones are also consistent and compatible with uses and zoning of the surrounding properties, and the property is practically and physically suited for the uses allowed in the proposed zone reclassification, as required by WMC 21.44.070. We reverse the city council's

[63] FEIS, 3.4-22.
[64] FEIS at 3.4-23.
[65] FEIS at 3.4-24.

denial of the rezones and remand to the city to grant the rezones.

C. Preliminary Plat Application

The council denied Phoenix's preliminary plat applications on the basis that the subdivisions were inconsistent with the R-1 zone. Because we reverse the council's rezone decision, we remand to the city for consideration of Phoenix's preliminary plat applications.

Conclusion

The city council erred when it concluded that adequate services could not be provided to the subject properties, that the rezones were inconsistent with the Woodinville comprehensive plan, that there was no demonstrated need for the rezones, and that the rezones do not bear a substantial relationship to the public health, morals, or welfare. The council further erred by engaging in an unlawful legislative procedure during a quasi-judicial decision-making process. Because the proposed rezones meet all statutory and common law requirements for

rezones, we reverse the denial of the rezones and remand for reconsideration of Phoenix's preliminary plat applications.

Reversed and remanded.

Leach, J.

WE CONCUR:

Schindler, C.J.

Ellington, J.

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

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| PHOENIX DEVELOPMENT, INC., a Washington corporation, and G&S SUNDQUIST THIRD FAMILY LIMITED PARTNERSHIP, a Washington limited partnership,<br><br>Appellants,<br><br>v.<br><br>CITY OF WOODINVILLE, a Washington municipal corporation, and CONCERNED NEIGHBORS OF WELLINGTON, a Washington nonprofit corporation,<br><br>Respondents. | ) | NO. 62167-0-I<br><br>ORDER DENYING MOTION FOR RECONSIDERATION |

The respondent, City of Woodinville, having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

DATED this 21st day of January, 2010.

For the Court:

Clark, J.

Judge

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STATE OF WASHINGTON
2010 JAN 21 PM 2:30

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

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| PHOENIX DEVELOPMENT, INC., a Washington corporation, and G&S SUNDQUIST THIRD FAMILY LIMITED PARTNERSHIP, a Washington limited partnership,<br><br>Appellants,<br><br>v.<br><br>CITY OF WOODINVILLE, a Washington municipal corporation, and CONCERNED NEIGHBORS OF WELLINGTON, a Washington nonprofit corporation,<br><br>Respondents. | ) | NO. 62167-0-I<br><br>ORDER DENYING MOTION FOR RECONSIDERATION |

The respondent, Concerned Neighbors of Wellington, having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

DATED this 21st day of January, 2010.

For the Court:

Judge

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2010 JAN 21 PM 2:30

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

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| PHOENIX DEVELOPMENT, INC., a Washington corporation, and G&S SUNDQUIST THIRD FAMILY LIMITED PARTNERSHIP, a Washington limited partnership,<br><br>Appellants,<br><br>v.<br><br>CITY OF WOODINVILLE, a Washington municipal corporation, and CONCERNED NEIGHBORS OF WELLINGTON, a Washington nonprofit corporation,<br><br>Respondents. | NO. 62167-0-I<br><br>ORDER CHANGING OPINION AND ORDER GRANTING MOTIONS TO PUBLISH OPINION |

The panel having determined that the opinion should be changed, it is hereby

ORDERED that the opinion of this court in the above-entitled case filed November 2, 2009, shall be changed as follows:

The following footnote shall be inserted on page 9, line 11, following the word "policies":

> These policies are relevant where, as in this case and in Woods, the zoning code expressly requires that any rezone be consistent with the comprehensive plan.

The remainder of the opinion shall remain the same.

Robert D. Johns, an interested party, and Lanzce G. Douglass, Inc., Lanzce G. Douglass Investments, LLC, and Lanzce G. Douglass, interested parties, having filed motions to publish opinion, and the hearing panel having reconsidered its prior

determination and finding that the opinion will be of precedential value; now, therefore it is hereby:

ORDERED that the unpublished opinion filed November 2, 2009, shall be published and printed in the Washington Appellate Reports.

Done this 22nd day of February, 2010.

Leach, J.

Schindler, C.J.

The Honorable Dean S. Lum
Trial Date: February 15, 2008

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

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| PHOENIX DEVELOPMENT, INC., a Washington Corporation, and G&S SUNDQUIST THIRD FAMILY LIMITED PARTNERSHIP, a Washington limited partnership,<br><br>Petitioners/Plaintiffs,<br><br>v.<br><br>CITY OF WOODINVILLE, a Washington Municipal Corporation, and CONCERNED NEIGHBORS OF WELLINGTON, a Washington Nonprofit Corporation,<br><br>Respondents/Defendants. | No. 07-2-29402-3 SEA<br><br>ORDER DISMISSING APPEAL OF LAND USE DECISION |

This matter having come on for hearing on the Land Use Petition Act appeal of Petitioners concerning the denial by the Woodinville City Council of two requested site specific rezones and the denial of two requested subdivision applications based upon the rezone denials; and the Court after having reviewed and considered those portions of the certified record and transcripts of proceedings from below appended to the briefing of the parties (per the Stipulation and Order Regarding Filing Administrative Record and Exhibits filed 12/17/07), the briefing of the parties, as well as the oral arguments of the respective legal council for the Petitioners and Respondents, concludes that the appeal should be denied and the LUPA petition dismissed. The

Petitioners have failed to meet the burden placed upon them by RCW 36.70C.130 to demonstrate that one of the six standards listed in RCW 36.70C.130 requires reversal of the City Council decisions. The Court is mindful that the standard of review under LUPA is deferential to both the legal and factual determinations of the local jurisdictions with expertise in land use regulation. Here, the Woodinville City Council is the decision maker to which deference is required. NOW THEREFORE,

1. The court hereby orders that the Land Use Petition commencing this appeal be dismissed and that the decisions of the Woodinville City Council challenged in the petition be sustained.

2. The bifurcated Complaint for Damages which has been stayed pending resolution of the LUPA claims set forth in the Land Use Petition is now ready for adjudication. The parties are directed to propose to the Court a case schedule (agreed, if possible) to govern the Complaint for Damages.

3. Pursuant to the Stipulation and Order Regarding Filing Administrative Record and Exhibits filed 12/17/07 and the oral open court agreement of the attorneys for the parties the Administrative Record includes the entire Administrative Record and Exhibits identified in the Index Listing of Administrative Record filed with the court on 12/10/2007.

4. The motion to certify to Court of Appeals is denied without prejudice. DSL

DATED this 29 day of February, 2008.

By _____
Honorable Dean S. Lum

PRESENTED BY:
OGDEN MURPHY WALLACE, P.L.L.C.

By _____
Greg A. Rubstello, WSBA #6271
Attorney for Respondents/Defendants, City Of Woodinville

APPROVED AS TO FORM AND NOTICE OF PRESENTMENT WAIVED:

By:_____
G. Richard Hill, WSBA No. 8806
Attorney for Petitioners/Plaintiffs

By:_____
J. Richard Aramburu, WSBA No. 466
Attorney for Concerned Neighbors of Wellington



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PRESENTED BY:
OGDEN MURPHY WALLACE, P.L.L.C.

By _____
Greg A. Rubstello, WSBA #6271
Attorney for Respondents/Defendants, City Of Woodinville

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By: J. Richard Aramburu
J. Richard Aramburu, WSBA No. 466
Attorney for Concerned Neighbors of Wellington



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BEFORE THE CITY COUNCIL OF
THE CITY OF WOODINVILLE

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| In the Matter of the Hearing Examiner's:) Rezone Recommendation and Preliminary Plat ) Approval for the "Montevallo" Development) | **Appeal Application No: APP2007-0001 Montevallo**<br><br>**FINDINGS, CONCLUSIONS, AND DECISION UPON CLOSED RECORD REVIEW** |

## SUMMARY OF DECISION

The City Council, of the City of Woodinville, denies the requested Rezone Application (ZMA2004094) recommended by the City Hearing Examiner and Grants the Appeal of the Concerned Neighbors of Wellington (CNW) of the Hearing Examiner's approval of the Preliminary Plat Application (PPA2004093) based solely upon the denial of the Rezone. Since the Hearing Examiner's approval of the Preliminary Plat Application was contingent upon the approval of the rezone, the City Council does not reach the merits of the other claims of error raised by the CNW in their appeal of the Hearing Examiner's Approval of the Preliminary Plat Application.

## SUMMARY OF RECORD AND PROCEDURAL MATTERS

Closed Record Review:
A closed record review of the Hearing Examiner's recommendation of May 16, 2007 to approve the requested rezone and of the Hearing Examiner's decision to approve the Preliminary Plat Application based on the appeal of the CNW was held by the City Council on August 6 and August 13, 2007. Oral argument was heard from the Applicant Phoenix Development, Appellant CNW, and other parties of record. No new evidence was received by the City Council. Exhibits received and considered by the Hearing Examiner as well as the video/audio recordings of the open record hearing before the Hearing Examiner were provided to and reviewed by the City Council Members prior to the August 6, 2007 public meeting.

## FINDINGS OF FACT

1. The following "General Findings" made by the Hearing Examiner are adopted and incorporated by reference herein: 1, 2, 3, 4, and 6.

2. The following "Findings Related To The Rezone" made by the Hearing Examiner are adopted and incorporated by reference herein: 9, 11, 12, 13, 14, and 15.

3. The subject site is currently zoned R-1 and has been zoned R-1 since incorporation of the City. The zoning designation was at the time of incorporation a continuation of the applicable King County zoning designation under which the land had been subdivided and developed as part of unincorporated King County. Although the property can currently be

developed under the R-1 zoning designation as provided in the specific language of the WMC there is nothing in the record to indicate the Applicant ever sought preliminary plat or other development approval consistent with the current R-1 zoning.

4. The R-1 zoning is consistent with the "Low Density Residential" land use designation described in the City's Comprehensive Plan and the land use designation for the area in which the subject site is located on the Future Land Use Map made part of the City's Comprehensive Plan.

5. It is not necessary to rezone the property in order to provide consistency with the City's Comprehensive Plan. Current property zoning is consistent with the City's Comprehensive Plan.

6. In its legislative capacity, the City Council finds that the current zoning designation of R-1 is appropriate. The R-1 designation is appropriately placed upon the property in consideration of:

a. The development history of the area in which the property is located.

b. The maintenance of the existing suburban neighborhood character.

c. The lack of adequate public facilities and services to support the proposed R-4 development, including, but not limited to the substandard arterial roads and pedestrian walkways providing access to and from the subject property, the absence of any City parklands within walking distance of the subject property, and the absence of public transit services servicing the neighborhood area. Developments with R-4 densities are inappropriate in areas of the City where adequate public facilities and services cannot be provided at the time of development. See the statement of purpose in WMC Section 21.04.080(1)(a).

d. The absence of any substantial changes in the circumstances from which the original zoning determination was made, including, but not limited to land use patterns, public opinion, established neighborhood character, substandard roadways, the absence of stores, sidewalks, and community parks.[1] Public sewer has not been brought to the property, but the Applicant for the rezone has proposed bringing public sewer to the property in its preliminary plat application. The Applicant would connect to public sewer at locations that have existed and been available for sewer connection since the mid 1990's.

e. Although the proposed rezone is arguably consistent with several policies of the City's Comprehensive Plan, a change in the zoning at the subject site is not needed or necessary to fulfill the City's Comprehensive Plan or to implement the Land Use Element of the Plan.[2]

f. The well established R-1 subdivisions of the same R-1 density served by public and private facilities and services inadequate to support the planned R-4 densities. See the statement of purpose in WMC Section 21.04.080(2)(a) and (b).

7. Specific growth targets have been set for the City of Woodinville to meet by 2022 by King County consistent with the Growth Management Act (GMA) RCW 36.70A and the City of Woodinville is on track to meet these targets. It is not necessary for the City of

[1] Although the issue of whether or not there were changed circumstances to support a rezone was in dispute, the Council notes that the Hearing Examiner made no specific finding on this issue.

[2] Although the issue of whether or not the rezone was needed to fulfill the comprehensive plan was in dispute, the Council notes that the Hearing Examiner made no finding on this issue. The Hearing Examiner found only that the proposed rezone was "generally compliant" with the comprehensive plan.

Woodinville to approve of the Montevallo development to meet these growth targets. Although the Applicant disputes the accuracy of the City staff's numbers, the Applicant has not demonstrated that the City is not on track to meet is targets.

8. The City of Woodinville currently has a diversity of housing within the R-1, R-4 R-6 R-12, R-24, R-48, TB and Central Business District (CBD) zoning designations that allow for a wide variety of housing types, incomes and living situations.

9. The FEIS completed by the City of Woodinville shows that the Montevallo development identifies unavoidable adverse impacts to transportation systems of the city and in the neighborhoods the development is set within. The impacts can be avoided by denial of the rezone. Reliance upon disputed mitigation measures and the safe driving habits of future residents of higher density developments is unwise and not in the public interest.

10. The Montevallo Development as proposed is not in character with the surrounding R-1 neighborhoods and properties.

11. The City of Woodinville must ensure that its capital investments carry out the goals and objectives of the comprehensive plan in a manner which is consistent with the Land Use Element, Capital Facilities Element and Transportation Element of the Plan.

12. The City of Woodinville must ensure that its capital investments carry out the goals and objectives of the comprehensive plan in a manner which is consistent with the Land Use Element, Capital Facilities Element, and Transportation Element of the plan.

13. The "need" criterion under WMC 21.44.070 ultimately requires an objective judgment by the City Council based upon plans, goals, policies and timeframes. The Council finds that the proposed rezone is not "needed" at this time.

14. While some Comprehensive Plan and code provisions can be construed as supporting further R-4 development within the low density residential areas of the City, the extent, character and timing of any such development is not indelibly predetermined.

15. The City Council has identified key priorities for planning growth and infrastructure investment in the Comprehensive Plan under a number of different elements as well as in the Municipal Code, the Capital Improvement Plan (CIP) and City's budget so that near-term and long-term growth proceeds as a coordinated, time efficient and cost effective investment process.

16. The Comprehensive Plan has a twenty year planning horizon and the City Council recognized that funding constraints require a need for prioritization of actions. As a result, the City Council selected the downtown area for its focus for growth and infrastructure requirements because the downtown has the existing infrastructure capacity and services readily available where the City could achieve many of its GMA goals for housing, employment, and economic development and transportation improvements. This is precisely what the Growth Management Act, Vision 2020 and the King County-wide planning policies are asking cities to do: to guide development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

17. King County countywide policies call for contiguous and orderly development within Urban Growth Areas and the provision for urban services to such development.

18. Chapter III Land Use Pattern of the County's Countywide Planning Polices describes policies relating to land use and development. Relevant land use (LU) policies are summarized as follows. Urban areas (which includes all of the City of Woodinville) are designated to accommodate a majority of future growth and at least the 20-year projection of population and employment growth (LU-25a & LU-26). Within Urban Areas, growth should first be directed to centers and urbanized areas with existing infrastructure capacity (LU-28). Growth phasing plans for the next 10 to 20 years are required and shall be based on locally adopted definitions, service levels, and financing commitments (LU-29). Chapter III also includes a statement that phased growth is required to promote efficient use of the land, add certainty to infrastructure planning and to insure that urban services can be provided to urban development.

19. The Growth Management Act urban growth goal states: "Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner".

20. Vision 2020, a long-range growth and transportation strategy for Puget Sound Region, provides the following relevant frame work polices. Concentrate development in urban areas to conserve agricultural, forest, and environmental resources. Within urban growth areas, promote growth into centers that are connected by an efficient, transit-oriented, multi-modal transportation system (RF-1). Develop a transportation system that emphasizes accessibility, includes a variety of mobility options, and enables the efficient movement of people, goods, and freight (RF-4). The proposed rezone runs contrary to this strategy.

21. The City Council decision to focus planning and growth in the downtown provided the context within short-term capital planning could be done and subsequent decisions made with a view to a longer planning horizon.

23. The City Council has given priority to capital improvements that: (1) protect the public health and safety; (2) have a positive impact on the operating budget through reduced expenditures; (3) correct existing deficiencies or maintain existing levels of service adopted in the Comprehensive Plan; and (4) provide critical City services such as police, surface water and transportation.

24. The City is not yet prepared to commit capital resources to the subject area in the near-term. Committing the City to prematurely construct infrastructure and provide services to this area will become increasingly problematic, resulting in an increasing inefficiency of services thereby lessening the economic gain and placing a growing strain on the fiscal resources of the community.

25. While new development creates impacts upon public facilities and is required to pay its fair share of costs associated with those impacts, it does little in the way of correcting existing deficiencies within the context of the Capital Improvement Plan (CIP) and the overall capacity of the City to provide for infrastructure needs and services. The City has a

20 year list of transportation needs. Because of the scope, nature size and costs of these needs and because the sources of funding are limited relative to the cost of improvements, the City has focused its investment on major traffic chokepoints in and around downtown.

26. The City has provided over $100,000 in funding to an ongoing sustainable development study, referenced in Ordinance 431 that will answer significant questions related to land use in the City that should be available to the City Council before additional rezones in the R-1 areas of the City are approved. See also the City Staff Report references to the study.

27. Preliminary plat approval is contingent upon approval of the requested rezone.

## CONCLUSIONS

1. In its quasi-judicial capacity, the City Council finds that, a site specific rezone of the property to R-4 density would be inconsistent with significant Comprehensive Plan Policies and does not bear a substantial relationship to the public health, safety, morals or welfare.

2. Approval of the proposed rezone is inappropriate at this time due to the deficient public facilities and services (other than sewer) in the area where the property is located and the currently ongoing sustainable development study

3. The proposed rezone, and the anticipated higher density development that would result, does not meet the City Council's key priorities identified for planning growth and infrastructure investment in the Comprehensive Plan under a number of different elements as well as in the Municipal Code, the Capital Improvement Plan (CIP) and City's budget so that near-term and long-term growth proceeds as a coordinated, time efficient and cost effective investment process.

4. The City Council selected the downtown area for its focus for growth and infrastructure requirements because the downtown has the existing infrastructure capacity and services readily available where the City could achieve many of its GMA goals for housing, employment, and economic development and transportation improvements. The proposed rezone, as outlined, does not further the City's goals and objective in this regard which is to guide development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

5. The rezone is inconsistent with the City's strategy to meet its regional growth objective. The City has chosen to meet the growth objective in the CBD while insuring that new growth in other areas of the City does not negatively impact the City's transportation land use and capital facilities goals and objectives. RCW 36.70A directs growth as follows: growth should first be directed to centers and urbanized areas with existing infrastructure capacity (consistent with LU-28 County-wide planning policy). Growth phasing plans for the next 10 to 20 years are required and shall be based on locally adopted definitions, service levels, and financing commitments (LU-29). Chapter III also includes a statement that phased growth is required to promote efficient use of the land, add certainty to infrastructure planning and to insure that urban services can be provided to urban development.

6. The City of Woodinville planning approach is complying with GMA requirements. According to past King County Buildable Lands Reports and the preliminary 2007 report, the City has excess capacity to accommodate its GMA housing allocation and is also meeting its employment growth target. The City is providing and supporting affordable housing for the Eastside through its participation in a coalition of east King County cities (ARCH). The City of Woodinville Capital Facilities planning and CIP are addressing the City's infrastructure deficiencies and commits the City to extending infrastructure and services to support urban development with the intent of maximizing the benefit from capital projects relative to costs and resources and in an efficient manner.

7. While new development creates impacts upon public facilities and is required to pay its fair share of costs associated with those impacts, it does little in the way of correcting existing deficiencies within the context of the CIP and the overall capacity of the City to provide for infrastructure needs and services. The City has a 20 year list of transportation needs. Because of the scope, nature, size, and costs of these needs and because the sources of funding are limited relative to the cost of improvements, the City has focused its investment on major traffic chokepoints in and around downtown.

8. Planning is critical to assist a city in its evolution. Given the location of the City, the Council objective is to effectively and comprehensively think and plan in a manner consistent with sound regional planning. The City must proactively direct development to occur in appropriate locations and concurrent with the availability and provision of adequate public facilities and services. Planning comprehensively ensures the integrity of the City's growth strategy. Development which the City cannot readily and efficiently provide services to is clearly premature and is not consistent with the City of Woodinville Comprehensive Plan.

9. The current underlying zoning of the property at R-1 is inconsistent with the proposed density of the preliminary plat application.

## DECISION

**BASED UPON THE PRECEDING FINDINGS OF FACT AND CONCLUSIONS, THE CITY COUNCIL THEREFORE DENIES REZONE APPLICATION ZMA2004094 AND REVERSES THE HEARING EXAMINER'S APPROVAL OF THE PRELIMINARY PLAT APPLICATION PPA2004093 FOR THE PROPOSED "MONTEVALLO SUBDIVISION.**

**APPROVED AND ADOPTED BY THE WOODINVILLE CITY COUNCIL this 20th Day of August, 2007.**

BEFORE THE CITY COUNCIL OF
THE CITY OF WOODINVILLE

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| In the Matter of the Hearing Examiner's:) Rezone Recommendation and Preliminary Plat ) Approval for the "Wood Trails" Development) | **Appeal Application No: APP2007-0002 Wood Trails**<br><br>**FINDINGS, CONCLUSIONS, AND DECISION UPON CLOSED RECORD REVIEW** |

## SUMMARY OF DECISION

The City Council, of the City of Woodinville, denies the requested Rezone Application (ZMA2004053) recommended by the City Hearing Examiner and Grants the Appeal of the Concerned Neighbors of Wellington (CNW) of the Hearing Examiner's approval of the Preliminary Plat Application (PPA2004054) based solely upon the denial of the Rezone. Since the Hearing Examiner's approval of the Preliminary Plat Application was contingent upon the approval of the rezone, the City Council does not reach the merits of the other claims of error raised by the CNW in their appeal of the Hearing Examiner's Approval of the Preliminary Plat Application.

## SUMMARY OF RECORD AND PROCEDURAL MATTERS

Closed Record Review:
A closed record review of the Hearing Examiner's recommendation of May 16, 2007 to approve the requested rezone and of the Hearing Examiner's decision to approve the Preliminary Plat Application based on the appeal of the CNW was held by the City Council on August 6 and August 13, 2007. Oral argument was heard from the Applicant Phoenix Development, Appellant CNW, and other parties of record. No new evidence was received by the City Council. Exhibits received and considered by the Hearing Examiner as well as the video/audio recordings of the open record hearing before the Hearing Examiner were provided to and reviewed by the City Council Members prior to the August 6, 2007 public meeting.

## FINDINGS OF FACT

1. The following "General Findings" made by the Hearing Examiner are adopted and incorporated by reference herein: 1, 2, 3, 4, 5, and 7.

2. The following "Findings Related To The Rezone" made by the Hearing Examiner are adopted and incorporated by reference herein: 8, 9, 10, 11, 12, 13, 14, 15, and 16.

3. The subject site is currently zoned R-1 and has been zoned R-1 since incorporation of the City. The zoning designation was at the time of incorporation a continuation of the applicable King County zoning designation under which the land had been subdivided and developed as part of unincorporated King County. City development regulations allow the property

developed consistent with its R-1 designation. There is nothing in the record to indicate that the Applicant attempted to develop the property under its current R-1 zoning designation.

4. The R-1 zoning is consistent with the "Low Density Residential" land use designation described in the City's Comprehensive Plan and the land use designation for the area in which the subject site is located on the Future Land Use Map made part of the City's Comprehensive Plan.

5. It is not necessary to rezone the property in order to provide consistency with the City's Comprehensive Plan. Current property zoning is consistent with the City's Comprehensive Plan.

6. In its legislative capacity, the City Council finds that the current zoning designation of R-1 is appropriate. The R-1 designation is appropriately placed upon the property in consideration of:

a. The development history of the area in which the property is located.

b. The maintenance of the existing suburban neighborhood character.

c. The lack of adequate public facilities and services to support the proposed R-4 development, including, but not limited to the substandard arterial roads and pedestrian walkways providing access to and from the subject property, the absence of any City parklands within walking distance of the subject property, and the absence of public transit services servicing the neighborhood area. Developments with R-4 densities are inappropriate in areas of the City where adequate public facilities and services cannot be provided at the time of development. See the statement of purpose in WMC Section 21.04.080(1)(a).

d. Area-wide environmental constraints imposed by steep slopes and erosion hazard areas make R-1 zoning particularly appropriate for the site by minimizing the significant unavoidable adverse impacts of residential development of the property. See the statement of purpose in WMC Section 21.04.080(2)(a) and (b).

e. The absence of any substantial changes in the circumstances from which the original zoning determination was made, including, but not limited to land use patterns, public opinion, established neighborhood character, substandard roadways, the absence of stores, sidewalks, and community parks.[1] Public sewer has not been brought to the property, but the Applicant for the rezone has proposed bringing public sewer to the property in its preliminary plat application. The Applicant would connect to public sewer at locations that have existed and been available for sewer connection since the mid 1990's.

f. Although the proposed rezone is arguably consistent with several policies of the City's Comprehensive Plan, a change in the zoning at the subject site is not needed or necessary to fulfill the City's Comprehensive Plan or to implement the Land Use Element of the Plan.[2] The Council does not construe its Comprehensive Plan or development regulations as requiring a rezone of this type.

g. The well established R-1 subdivisions of the same R-1 density served by public and private facilities and services inadequate to support the planned R-4 densities. See the statement of purpose in WMC Section 21.04.080(2)(a) and (b).

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[1] Although the issue of whether or not there were changed circumstances to support a rezone was in dispute, the Council notes that the Hearing Examiner made no specific finding on this issue.

[2] Although the issue of whether or not the rezone was needed to fulfill the comprehensive plan was in dispute, the Council notes that the Hearing Examiner made no finding on this issue. The Hearing Examiner found only that the proposed rezone was "generally compliant" with the comprehensive plan.

7. Specific growth targets have been set for the City of Woodinville to meet by 2022 by King County consistent with the Growth Management Act (GMA) RCW 36.70A and the City of Woodinville is on track to meet these targets. It is not necessary for the City of Woodinville to approve of the Wood Trails development to meet these growth targets. Although the Applicant disputes the accuracy of the City staff's numbers, the Applicant has not demonstrated that the City is not on track to meet is targets.

8. The City of Woodinville currently has a diversity of housing within the R-1, R-4 R-6 R-12, R-24, R-48 and Central Business District (CBD) zoning designations that allow for a wide variety of housing types, incomes and living situations.

9. The Woodinville Municipal Code (WMC) Critical Areas Ordinance mapping showed evidence of area-wide environmental constraints as evidence in the FEIS and exhibits.

10. The FEIS completed by the City of Woodinville shows evidence of area-wide environmental constraints. See exhibit for steep slopes. See exhibit for wetlands.

11. The FEIS completed by the City of Woodinville shows that the Wood Trails development identifies unavoidable adverse impacts to transportation systems of the city and in the neighborhoods the development is set within. The impacts can be avoided by denial of the rezone. Reliance upon disputed mitigation measures and the safe driving habits of future residents of higher density developments is unwise and not in the public interest.

12. The Wood Trails Development as proposed is not in character with the surrounding R-1 neighborhoods and properties.

13. The City of Woodinville must ensure that its capital investments carry out the goals and objectives of the comprehensive plan in a manner which is consistent with the Land Use Element, Capital Facilities Element, and Transportation Element of the plan.

14. The "need" criterion under WMC 21.44.070 ultimately requires an objective judgment by the City Council based upon plans, goals, policies and timeframes. The Council finds that the proposed rezone is not "needed" at this time.

15. While some Comprehensive Plan and code provisions can be construed as supporting further R-4 development within the low density residential areas of the City, the extent, character and timing of any such development is not indelibly predetermined.

16. The City Council has identified key priorities for planning growth and infrastructure investment in the Comprehensive Plan under a number of different elements as well as in the Municipal Code, the Capital Improvement Plan (CIP) and City's budget so that near-term and long-term growth proceeds as a coordinated, time efficient and cost effective investment process.

17. The Comprehensive Plan has a twenty year planning horizon and the City Council recognized that funding constraints require a need for prioritization of actions. As a result, the City Council selected the downtown area for its focus for growth and infrastructure requirements because the downtown has the existing infrastructure capacity and services readily available where the City could achieve many of its GMA goals for housing, employment, and economic

development and transportation improvements. This is precisely what the Growth Management Act, Vision 2020 and the King County-wide planning policies are asking cities to do: to guide development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

18. King County countywide policies call for contiguous and orderly development within Urban Growth Areas and the provision for urban services to such development.

19. Chapter III Land Use Pattern of the County's Countywide Planning Polices describes policies relating to land use and development. Relevant land use (LU) policies are summarized as follows. Urban areas (which includes all of the City of Woodinville) are designated to accommodate a majority of future growth and at least the 20-year projection of population and employment growth (LU-25a & LU-26). Within Urban Areas, growth should first be directed to centers and urbanized areas with existing infrastructure capacity (LU-28). Growth phasing plans for the next 10 to 20 years are required and shall be based on locally adopted definitions, service levels, and financing commitments (LU-29). Chapter III also includes a statement that phased growth is required to promote efficient use of the land, add certainty to infrastructure planning and to insure that urban services can be provided to urban development.

20. The Growth Management Act urban growth goal states: "Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner".

21. Vision 2020, a long-range growth and transportation strategy for Puget Sound Region, provides the following relevant polices. Concentrate development in urban areas to conserve agricultural, forest, and environmental resources. Within urban growth areas, promote growth into centers that are connected by an efficient, transit-oriented, multi-modal transportation system (RF-1). Develop a transportation system that emphasizes accessibility, includes a variety of mobility options, and enables the efficient movement of people, goods, and freight (RF-4). The proposed rezone runs contrary to this strategy.

22. The City Council decision to focus planning and growth in the downtown provided the context within short-term capital planning could be done and subsequent decisions made with a view to a longer planning horizon.

24. The City Council has given priority to capital improvements that: (1) protect the public health and safety; (2) have a positive impact on the operating budget through reduced expenditures; (3) correct existing deficiencies or maintain existing levels of service adopted in the Comprehensive Plan; and (4) provide critical City services such as police, surface water and transportation.

25. The City is not yet prepared to commit capital resources to the subject area in the near-term. Committing the City to prematurely construct infrastructure and provide services to this area will become increasingly problematic, resulting in an increasing inefficiency of services thereby lessening the economic gain and placing a growing strain on the fiscal resources of the community.

26. While new development creates impacts upon public facilities and is required to pay its fair share of costs associated with those impacts, it does little in the way of correcting existing deficiencies within the context of the Capital Improvement Plan (CIP) and the overall capacity of the City to provide for infrastructure needs and services. The City has a 20 year list of transportation needs. Because of the scope, nature size and costs of these needs and because the sources of funding are limited relative to the cost of improvements, the City has focused its investment on major traffic chokepoints in and around downtown.

27. The City has provided in excess of $100,000 to finance an ongoing sustainable development study, referenced in Ordinance 431 that will answer significant questions related to land use in the City that should be available to the City Council before additional rezones in the R-1 areas of the City are approved. See also the references to the study in the Staff Report.

## CONCLUSIONS

1. In its quasi-judicial capacity, the City Council finds that, a site specific rezone of the property to R-4 density would be inconsistent with significant Comprehensive Plan Policies and does not bear a substantial relationship to the public health, safety, morals or welfare.

2. Approval of the proposed rezone is inappropriate at this time due to the deficient public facilities and services (other than sewer) in the area where the property is located and the currently ongoing sustainable development study

3. The proposed rezone and anticipated higher density development that would result does not meet the City Council's key priorities identified for planning growth and infrastructure investment in the Comprehensive Plan under a number of different elements as well as in the Municipal Code, the Capital Improvement Plan (CIP) and City's budget so that near-term and long-term growth proceeds as a coordinated, time efficient and cost effective investment process.

4. The City Council selected the downtown area for its focus for growth and infrastructure requirements because the downtown has the existing infrastructure capacity and services readily available where the City could achieve many of its GMA goals for housing, employment, and economic development and transportation improvements. The proposed rezone, as outlined, does not further the City's goals and objective in this regard which is to guide development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

5. The rezone is inconsistent with the City's strategy to meet its regional growth objective. The City has chosen to meet the growth objective in the CBD while insuring that new growth in other areas of the City does not negatively impact the City's transportation land use and capital facilities goals and objectives. RCW 36.70A directs growth as follows: growth should first be directed to centers and urbanized areas with existing infrastructure capacity (consistent with LU-28 County-wide planning policy). Growth phasing plans for the next 10 to 20 years are required and shall be based on locally adopted definitions, service levels, and financing commitments (LU-29). Chapter III also includes a statement that phased growth is required to promote efficient use of the land, add certainty to infrastructure planning and to insure that urban services can be provided to urban development.

6. The City of Woodinville planning approach is complying with GMA requirements. According to past King County Buildable Lands Reports and the preliminary 2007 report, the City has excess capacity to accommodate its GMA housing allocation and is also meeting its employment growth target. The City is providing and supporting affordable housing for the Eastside through its participation in a coalition of east King County cities (ARCH). The City of Woodinville Capital Facilities planning and CIP are addressing the City's infrastructure deficiencies and commits the City to extending infrastructure and services to support urban development with the intent of maximizing the benefit from capital projects relative to costs and resources and in an efficient manner.

7. While new development creates impacts upon public facilities and is required to pay its fair share of costs associated with those impacts, it does little in the way of correcting existing deficiencies within the context of the CIP and the overall capacity of the City to provide for infrastructure needs and services. The City has a 20 year list of transportation needs. Because of the scope, nature, size, and costs of these needs and because the sources of funding are limited relative to the cost of improvements, the City has focused its investment on major traffic chokepoints in and around downtown.

8. Planning is critical to assist a city in its evolution. Given the locational context of the City, the objective is to effectively and comprehensively think and plan in a manner consistent with sound regional planning. The City must proactively direct development to occur in appropriate locations and concurrent with the availability and provision of adequate public facilities and services. Planning comprehensively ensures the integrity of the City's growth strategy. Development which the City cannot readily and efficiently provide services to is clearly premature and is not consistent with the City of Woodinville Comprehensive Plan.

9. The current underlying zoning of the property at R-1 is inconsistent with the proposed density of the preliminary plat application.

## DECISION

**BASED UPON THE PRECEDING FINDINGS OF FACT AND CONCLUSIONS, THE CITY COUNCIL THEREFORE DENIES REZONE APPLICATION ZMA2004053 AND REVERSES THE HEARING EXAMINER'S APPROVAL OF THE PRELIMINARY PLAT APPLICATION PPA2004054 FOR THE PROPOSED "WOOD TRAILS SUBDIVISION.**

**APPROVED AND ADOPTED BY THE WOODINVILLE CITY COUNCIL this 20th Day of August, 2007.**

**17.07.030 Project permit application framework.**

ACTION TYPE

| PROCEDURE PROJECT PERMIT APPLICATIONS (TYPE I – IV) LEGISLATIVE | | | | | |
|---|---|---|---|---|---|
| | **TYPE I** | **TYPE II** | **TYPE III** | **TYPE IV** | **TYPE V** |
| Final Decision Made By: | Director | Director | Hearing Examiner | City Council | City Council |
| Recommendation Made By: | N/A | N/A | N/A | N/A | Planning Commission |
| Notice of Application: | No | Yes | Yes | No | No |
| Open Record Public Hearing: | No | Only if appealed, open record hearing before Hearing Examiner | Yes, before Hearing Examiner to render final decision | No | Yes, before Plng. Comm. to make recommendation to Council |
| Closed Record Appeal/Final Decision: | No | No | Only if appealed, then before Council, unless site-specific zoning map amendments, then before Council on ordinance adoption | Yes, before Council to render final decision | Yes, or Council could hold its own hearing |
| Judicial Appeal: | Yes | Yes | Yes | Yes | Yes |

DECISION

| **TYPE I** | **TYPE II** | **TYPE III** | **TYPE IV** | **TYPE V** |
|---|---|---|---|---|
| Boundary Line Adjustments<br>Home Occupation Permits<br>Home Industry Permits<br>Temporary Use Permits | Short Plats<br>Shoreline Development Permits<br>Binding Site Plans<br>Minor Modifications<br>Subdivisions Administrative Interpretations<br>Conditional Use Permit Administrative Approvals | Conditional Use Permits – Hearing Examiner Approval<br>Shoreline CUPs<br>Site Specific Zoning Map Amendments<br>Subdivisions – Preliminary<br>Special Use Permits<br>Variances<br>Major Modifications<br>Subdivisions | Subdivisions Final | Zoning Code Amendments<br>Development Regulations Amendments<br>Area-Wide Zoning Map Amendments<br>Comprehensive Plan Amendments<br>Annexations<br>Subdivision Vacations<br>Development Agreements |

(Ord. 448 § 3, 2007; Ord. 390 § 2, 2005; Ord. 164 § 2, 1996; Ord. 143 § 1, 1996)

**21.08.030 Residential land uses.**

| | | | RESIDENTIAL | | | | COMMERCIAL/INDUSTRIAL/PUBLIC | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| A. RESIDENTIAL LAND USES | | | L | M | M | H | N | B | T | B | G | B | C | B | O | I | P | I |
| | | | O | O | E | I | E | U | O | U | E | U | E | U | F | N | U | N |
| | | | W | D | D | G | I | S | U | S | N | S | N | S | F | D | B | S |
| | | Z | | E | I | H | G | I | R | I | E | I | T | I | I | U | L | T |
| | | O | D | R | U | | H | N | I | N | R | N | R | N | C | S | I | I |
| KEY | | N | E | A | M | D | B | E | S | E | A | E | A | E | E | T | C | T |
| P – Permitted Use | | E | N | T | | E | O | S | T | S | L | S | L | S | | R | | U |
| C – Conditional Use | | | S | E | D | N | R | S | | S | | S | | S | | I | | T |
| S – Special Use | | | I | | E | S | H | | | | | | | | | A | | I |
| | | | T | D | N | I | O | | | | | | | | | L | | O |
| | | | Y | E | S | T | O | | | | | | | | | | | N |
| | | | | N | I | Y | D | | | | | | | | | | | A |
| | | | | S | T | | | | | | | | | | | | | L |
| | | | | I | Y | | | | | | | | | | | | | |
| | | | | T | | | | | | | | | | | | | | |
| | | | | Y | | | | | | | | | | | | | | |
| NAICS# | SPECIFIC LAND USE | | R1 – 4 | R5 – 8 | R9 – 18 | R19+ | NB | | TB | | GB | | CBD | | O | I | P/I | |
| | DWELLING UNITS, TYPES: | | | | | | | | | | | | | | | | | |
| * | Single detached | | P, C19 | P, C19 | P | | | | | | | | | | | | | |
| * | Duplex | | P10 | P10 | P10 | P10 | | | | | | | | | | | | |
| * | Townhome | | C10, 12 | C7, 10, 12 | P | P | | | P20 | | | | P | | P18 | | | |
| * | Apartment | | | P11 | P | P | | | P20 | | | | P | | | | | |
| * | Mobile home park | | | P | P | | | | | | | | P | | | | | |
| 623311 623312 | Senior citizen assisted (See WMC 21.06.188 for definition) | | | P11 | P | P | | | | | | | P | | | | | |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | GROUP RESIDENCES: | | | | | | | | | | | | |
| * | Community residential facility | | C15 | C15 | P15 | P15 | | | | P15 | | | P15 |
| 721310 | Dormitory | | C2 | C2 | P2 | P2 | | | | P2 | | P2 | P13 |
| | | | | | | | | | | | | | |
| | ACCESSORY USES: | | | | | | | | | | | | |
| * | Residential accessory uses | | P3 | P3 | P3 | P3 | | | | P3 | | | P16 |
| * | Home occupation (8) | | P | P | P | P | | | | P | | | |
| * | Home industry (9) | | C | C | C | C | | | | | | | |
| | | | | | | | | | | | | | |
| | TEMPORARY LODGING: | | | | | | | | | | | | |
| 721110 | Hotel/motel | | | | | | | P5 | P | P | | | |
| * 721191 | Bed and breakfast inns | | P6 | P6 | P6 | | | P5 | | P6 | | | |
| 721310 | Organization hotel/lodging | | | | | | | | | | | | |
| * 624221 | Temporary shelter | | | | | | | | | P4 | | | P17 |
| * 721199 | Youth hostel | | | | | | | P5 | | P14 | | | |
| | | | | | | | | | | | | | |

GENERAL CROSS REFERENCES: Land Use Table Instructions, see WMC 21.02.070 and 21.08.020
Development Standards, see Chapters 21.12 through 21.30 WMC
General Provisions, see Chapters 21.32 through 21.38 WMC
Application and Review Procedures, see Chapters 21.40 through 21.44 WMC
Tourist District Overlay Regulations, see WMC 21.38.065
R-48/O regulations, see WMC 21.38.030
(*) Definition of this specific Land Use, see Chapter 21.06 WMC

B. Development Conditions.

(1) Reserved.

(2) Only as an accessory to a school, college/university, church, or fire station.

(3)(a) Accessory dwelling units:

(i) Only one accessory dwelling per lot;

(ii) The primary residence or the accessory dwelling unit shall be owner occupied;

(iii) If the accessory dwelling unit is a separate structure, the accessory dwelling unit shall not be larger than 50 percent of the living area of the primary residence;

(iv) One additional off-street parking space is provided; and

(v) The accessory dwelling unit shall be converted to another permitted use or shall be removed if one of the dwelling units ceases to be owner occupied.

(b) Accessory Aircraft. One single or twin engine general aviation aircraft shall be permitted only on lots which abut, or have a legal access which is not a public right-of-way to, a waterbody or landing field, provided:

(i) No aircraft sales, service, repair, charter or rental;

(ii) No storage of aviation fuel except that contained in the tank or tanks of the aircraft; and

(iii) Storage hangars shall not exceed 20 feet in height above average finished grade or have a gross area exceeding 3,000 square feet.

(4) Only as an accessory use to an institution, school, public agency, church, synagogue, temple, or nonprofit community organization.

(5) See WMC 21.38.065, Special district overlay – Tourist District.

(6) Only as an accessory to the permanent residence of the operator, provided:

(a) Serving meals to paying guests shall be limited to breakfast;

(b) The number of guest rooms shall not exceed three; and

(c) The fee owner of the residence serving as a bed and breakfast must reside on the premises.

(7) A conditional use permit is not required if the townhomes are approved through subdivision review or if the project is in the R-8 zone.

(8) Home occupations are subject to the requirements and standards contained in WMC 21.30.040.

(9) Home industries are subject to the requirements and standards contained in WMC 21.30.050.

(10) Townhomes and duplexes must be compatible in design, height, color, style, and materials with existing neighborhood.

(11) Permitted only in the R-8 zone.

(12) Permitted only in the R-4 and R-6 zones, on parcels where protection of critical areas prohibits traditional single-family development.

(13) Only as an accessory to a public school.

(14) Also permitted in the Tourist District. See WMC 21.38.065.

(15) The number of occupants shall not exceed the occupant load of the structure, calculated as provided in Chapter 15.09 WMC, International Codes, or as may be hereafter amended.

(16) Only as an accessory to a permitted use.

(17) Only as an accessory to an institution, school, or public agency.

(18) Limited to current location. No new townhomes are permitted in the office zone except on the site currently containing townhomes on January 1, 2002.

(19) A conditional use permit is required for a single-family structure exceeding 8,500 gross square feet in the R-1 through R-6 zones.

(20) Residential development is not permitted on the ground floor and is only permitted as part of a development that integrates residential with tourist-oriented business development and is conditioned through a development agreement with the City that ensures a City-approved economic analysis will be provided and the proposed mixed-use development meets the vision and goals of the Tourist District Master Plan. No more than 25 percent of the entire area development may include residential uses. No direct residential dwelling unit entrances or exits may be permitted onto NE 148th Avenue NE, NE 145th Street, or Woodinville-Redmond Road. (Ord. 465 §§ 15, 19, 2008; Ord. 448 § 11, 2007; Ord. 428 § 5, 2006; Ord. 379 § 14, 2004; Ord. 347 § 9, 2003; Ord. 326 § 7, 2002; Ord. 324 § 1, 2002; Ord. 304 § 1, 2001; Ord. 295 § 2, 2001; Ord. 242 § 3, 1999; Ord. 194 § 3, 1997; Ord. 175 § 1, 1997)

**21.12.030 Densities and dimensions – Residential zones**

| | ZONES | RESIDENTIAL | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | URBAN RESIDENTIAL | | | | | | | |
| A. STANDARDS | | R-1 | R-4 | R-6 | R-8 | R-12 | R-18 | R-24 | R-48 |
| Base Density: Dwelling Unit/Acre | | 1 du/ac | 4 du/ac | 6 du/ac | 8 du/ac | 12 du/ac | 18 du/ac | 24 du/ac | 48 du/ac |
| Maximum Density: Dwelling Unit/Acre | | 2 du/ac (4) | 5 du/ac (1) | 7 du/ac (1) | 12 du/ac (6) | 18 du/ac (6) | 27 du/ac (6) | 36 du/ac (6) | 72 du/ac (6) |
| Minimum Density: % of Base Density (2) | | | 75% | 75% | 85% | 80% | 75% | 70% | 65% |
| Minimum Lot Width (3) | | 35 ft (7) | 30 ft | 30 ft | 30 ft | 30 ft | 30 ft | 30 ft | 30 ft |
| Minimum Street Setback (3) | | 10 ft (8) | 10 ft (8) | 10 ft (8) | 10 ft (8) | 10 ft (8)(17) | 10 ft (8) | 10 ft (8) | 10 ft (8) |
| Minimum Interior Setback (3) | | 10 ft (7) | 5 ft (10) | 5 ft (10) | 5 ft (10) | 5 ft (10)(17) | 5 ft (10) | 5 ft (10) | 5 ft (10) |
| Base Height | | 35 ft | 35 ft | 35 ft | 35 ft | 35 ft (17) | 45 ft | 45 ft | 45 ft (18) |
| Maximum Building Coverage: Percentage (5) (16) | | 15% (11) (14) | 35% | 50% | 55% | 60% | 60% | 70% | 70% |
| Maximum Impervious Surface: Percentage (5) (16) (19) | | 20% (15) | 45% | 70% | 75% | 85% (17) | 85% | 85% | 90% (18) |

B. Development Conditions.

(1) Maximum density may only be achieved through transfer of density credits (Chapter 21.36 WMC).

(2) Also see WMC 21.12.060.

(3) These standards may be modified under the provisions for zero-lot-line and townhome developments.

(4) Only as a duplex.

(5) Applies to each individual lot. Building coverage and impervious surface area standards for:

(a) Regional uses shall be established at the time of permit review; or

(b) Nonresidential uses in Residential zones shall comply with WMC 21.12.210.

(6) Maximum density may be achieved only through the application of residential density incentives or transfers of density credits.

(7) The standards of the R-4 zone shall apply if a lot is less than 15,000 square feet in area.

(8) At least 20 linear feet of driveway shall be provided between any garage, carport, or other fenced parking area and the street property line. The linear distance shall be measured along the centerline of the driveway from the access point to such garage, carport or fenced area to the street property line or pedestrian walkway, sidewalk, or easement access road(s), whichever is closest to the garage, carport or fenced parking area.

(9) Reserved.

(10) For townhomes or apartment development, the setback shall be the greater of:

(a) Twenty feet along any property line abutting R-4 through R-8 zones; or

(b) The average setback of the R-4 through R-8 zoned single-family detached dwelling units from the common property line separating said dwelling units from the adjacent townhome or apartment development, provided the required setback applied to said development shall not exceed 60 feet. The setback shall be measured from said property line to the closest point of each single-family detached dwelling unit, excluding projections allowed per WMC 21.12.160 and accessory structures existing at the time the townhome or apartment development receives conditional use permit approval by the City.

(c) See also landscaping requirements under WMC 21.16.060(2).

(11) On any lot over one acre in area, an additional five percent may be used for buildings related to agricultural or forestry practices.

(12) Reserved.

(13) Reserved.

(14) Maximum Building Coverage Percentage.

| Lot Size | Max. Percentage Allowed |
|---|---|
| <15,000 SF | 35% (Permitted for R-4 zone) |
| 15,000 to 25,000 SF | 28% |
| 25,000 to 35,000 SF | 22% |
| Over 35,000 SF | 15% |

(15) Maximum Impervious Surface Percentage

| Lot Size | Max. Percentage Allowed |
|---|---|
| <15,000 SF | 45% (Permitted in R-4 zone) |
| 15,000 to 25,000 SF | 37% |
| 25,000 to 35,000 SF | 28% |
| Over 35,000 SF | 20% |

(16) New mobile home parks are exempt from this requirement.

(17) If located in the Tourist District Overlay, see WMC 21.38.065.

(18) If located in the R-48/O district, see WMC 21.38.030(5).

(19) A maximum impervious credit of up to 50 percent for the use of pervious concrete materials as a recognized engineered all-weather surface used for walkways, patios, off-street parking lots, private easement access roads and similar hard surface areas. (Ord. 448 §§ 14, 15, 2007; Ord. 426 §§ 10, 11, 2006; Ord. 400 § 11, 2005; Ord. 175 § 1, 1997)

**WMC 21.04.020 Zone and map designation purpose.**

The purpose statements for each zone and map designation set forth in the following sections shall be used to guide the application of the zones and designations to all lands in the City of Woodinville. The purpose statements also shall guide interpretation and application of land use regulations within the zones and designations, and any changes to the range of permitted uses within each zone through amendments to this title.

**WMC 21.04.080 Residential zones.**

(1) The purpose of the Urban Residential zones (R) is to implement Comprehensive Plan goals and policies for housing quality, diversity and affordability, and to efficiently use residential land, public services and energy. These purposes are accomplished by:

(a) Providing, in the low density zones (R-1 through R-4), for predominantly single-family detached dwelling units. Other development types, such as duplexes and accessory units, are allowed under special circumstances;

(b) Providing, in the moderate density zones (R-5 through R-8), for a mix of predominantly single-family attached and detached dwelling units. Other development types, such as apartments, duplexes, and townhomes, would be allowed so long as they contribute to Woodinville's small town atmosphere as articulated in the vision statement found in the City's Comprehensive Plan and conform to all applicable regulations;

(c) Providing, in the medium density zones (R-9 through R-18), for duplexes, multifamily apartments, and townhomes, at densities supportive of transit and providing a transition to lower density areas; and

(d) Providing, in the high density zones (R-19 through R-48), for the highest residential densities, consisting of duplexes and multistory apartments. Developments have access to transit, pedestrian and nearby commercial facilities, and provide a transition to high intensity commercial uses.

(2) Use of this zone is appropriate in residential areas designated by the Comprehensive Plan as follows:

(a) The R-1 zone on or adjacent to lands with area-wide environmental constraints, or in well-established subdivisions of the same density, which are served at the time of development by public or private facilities and services adequate to support planned densities;

(b) The R-4 through R-8 zones on urban lands that are predominantly environmentally unconstrained and are served at the time of development, by adequate public sewers, water supply, roads and other needed public facilities and services; and

(c) The R-12 through R-48 zones in appropriate areas of the City that are served at the time of development by adequate public sewers, water supply, roads and other needed public facilities and services.

**WMC 21.44.070 Zone reclassification.**

A zone reclassification shall be granted only if the applicant demonstrates that the proposal is consistent with the Comprehensive Plan and applicable functional plans at the time the application for such zone reclassification is submitted, and complies with the following criteria:

(1) There is a demonstrated need for additional zoning as the type proposed.

(2) The zone reclassification is consistent and compatible with uses and zoning of the surrounding properties.

(3) The property is physically and practically suited for the uses allowed in the proposed zone reclassification.